

MONTANA LEGISLATIVE HISTORY

Chapter 552 1997

Bill H _____ S 374

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) 4/9 ☒ c

_____ c

_____ c

_____ c

Date Out

4/14 5:00 pm ☒ c

S. Committee on Judiciary

Hearing Date(s) 2/20 ☒ c

_____ c

_____ c

2/21 ☒ c

*referred to S. Finance and Claims

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

S. Committee on Finance and Claims

3/6

3/11 - subcommittee

3/13

3/14

3/20

3/21

H. Subcommittee

4/14 pre-5:00 pm

no minutes available at Law Library

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Free Conference Committee

4/18

4/21 - no exhibits available at Law Lib.

4/22

4/23

NOTE: 2 volumes

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LEGISLATIVE HISTORIES SINCE 1997

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	RETURNED TO SENATE WITH AMENDMENTS		
4/17	2ND READING AMENDMENTS CONCURRED	48	1
4/18	3RD READING CONCURRED AS AMENDED	47	2
4/21	SIGNED BY PRESIDENT		
4/21	SIGNED BY SPEAKER		
4/21	TRANSMITTED TO GOVERNOR		
4/28	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 414		
	EFFECTIVE DATE: 01/01/98		

SB 373 INTRODUCED BY HERTEL, ET AL. LC1211 DRAFTER: MARTIN

REVISE THE DEFINITION OF "RECEIPTS RECEIVED" TO INCLUDE
TRANSPORTATION COSTS AS A DEDUCTION FROM THE GROSS
PROCEEDS TAX ON METAL MINES

2/17	INTRODUCED		
2/17	FIRST READING		
2/17	REFERRED TO TAXATION		
2/17	FISCAL NOTE REQUESTED		
2/21	FISCAL NOTE RECEIVED		
2/22	FISCAL NOTE PRINTED		
3/10	HEARING		
3/18	TABLED IN COMMITTEE		
4/05	MISSED DEADLINE FOR 71ST DAY TRANSMITTAL		
	DIED IN COMMITTEE		

SB 374 INTRODUCED BY HARGROVE LC1007 DRAFTER: MACMASTER

IMPLEMENT THE CHILD SUPPORT PROVISIONS OF THE FEDERAL
PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY
RECONCILIATION ACT OF 1996

2/17	INTRODUCED		
2/17	FIRST READING		
2/17	REFERRED TO JUDICIARY		
2/17	FISCAL NOTE REQUESTED		
2/20	HEARING		
2/20	FISCAL NOTE RECEIVED		
2/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/25	REFERRED TO FINANCE & CLAIMS		
3/03	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL		
3/06	HEARING		
3/14	HEARING		
3/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/28	2ND READING PASSED	25	21
4/02	3RD READING PASSED	25	24
	TRANSMITTED TO HOUSE		
4/03	FIRST READING		
4/03	REFERRED TO JUDICIARY		
4/09	HEARING		
4/15	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/16	2ND READING NOT CONCUR AS AMENDED	36	64
4/16	RECONSIDERED PREVIOUS ACTION	54	41
4/16	2ND READING CONCURRED AS AMENDED	56	44
4/17	3RD READING CONCURRED	50	47
	RETURNED TO SENATE WITH AMENDMENTS		
4/18	MOTION CARRIED TO ALLOW BILL TO BE PLACED ON 2ND READING FOR CONSIDERATION OF HOUSE AMENDMENTS		
4/18	2ND READING AMENDMENTS NOT CONCURRED	30	18
4/18	FREE CONFERENCE COMMITTEE APPOINTED		

4/18	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/18	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	25	21
4/19	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	26	23
4/21	FREE CONFERENCE COMMITTEE DISSOLVED		
4/21	FREE CONFERENCE COMMITTEE APPOINTED		
4/22	FREE CONFERENCE COMMITTEE REPORT NO. 2		
4/22	ON MOTION RULES SUSPENDED TO PLACE ON 2ND READING THIS DAY		
4/22	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 2 ADOPTED	34	14
4/23	HEARING		
4/23	RECONSIDERED PREVIOUS ACTION TO ADOPT FREE CONFERENCE COMMITTEE REPORT NO. 2 ON 2ND READING	48	0
4/23	FREE CONFERENCE COMMITTEE REPORT NO. 3		
4/23	ON MOTION RULES SUSPENDED TO PLACE FREE CONFERENCE COMMITTEE REPORT NO. 3 ON 2ND READING THIS DAY		
4/23	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 3 ADOPTED	34	14
4/23	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 3 ADOPTED	33	17
	HOUSE		
4/18	FREE CONFERENCE COMMITTEE APPOINTED		
4/18	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/21	MOTION TO ADOPT FREE CONFERENCE COMMITTEE REPORT NO. 1 ON 2ND READING FAILED	35	65
4/21	FREE CONFERENCE COMMITTEE DISSOLVED		
4/21	FREE CONFERENCE COMMITTEE APPOINTED		
4/22	FREE CONFERENCE COMMITTEE REPORT NO. 2		
4/22	MOTION TO ADOPT FREE CONFERENCE COMMITTEE REPORT NO. 2 ON 2ND READING FAILED	35	65
4/23	RECONSIDERED PREVIOUS ACTION AND PLACED BACK ON 2ND READING	59	40
4/23	FREE CONFERENCE COMMITTEE REPORT NO. 3		
4/23	MOTION TO ADOPT FREE CONFERENCE COMMITTEE REPORT NO. 3 ON 2ND READING FAILED	49	51
4/23	RECONSIDERED PREVIOUS ACTION	57	43
4/23	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 3 ADOPTED	57	43
4/23	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 3 ADOPTED	56	43
4/30	SIGNED BY SPEAKER		
5/02	SIGNED BY PRESIDENT		
5/02	TRANSMITTED TO GOVERNOR		
5/12	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 552		
	EFFECTIVE DATE: 07/01/97—SECTIONS 11, 12 & 14-104		
	EFFECTIVE DATE: 10/01/97—SECTIONS 1, 9, 10 & 13		
	EFFECTIVE DATE: 10/01/98—SECTIONS 2-8		

SB 375 INTRODUCED BY THOMAS

LC0526 DRAFTER: MCCLURE

REVISE THE ASSESSMENT PROCEDURES FOR THE WORKERS'
COMPENSATION SUBSEQUENT INJURY FUND

2/17 INTRODUCED
 2/17 REFERRED TO LABOR & EMPLOYMENT RELATIONS
 2/17 FIRST READING
 2/17 FISCAL NOTE REQUESTED

SENATE BILL NO. 374

INTRODUCED BY

Haugen

A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING THE CHILD SUPPORT PROVISIONS OF THE FEDERAL PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996; INSTITUTING AUTOMATED, MASS CASE PROCESSING TECHNIQUES FOR CHILD SUPPORT, INCLUDING A CENTRAL CASE REGISTRY, A CENTRALIZED UNIT FOR TRACKING AND DISBURSING CHILD SUPPORT COLLECTIONS, AND A DIRECTORY OF NEW HIRES; RESTRUCTURING EXISTING CHILD SUPPORT PROCEDURES BY INCLUDING REVISED INCOME-WITHHOLDING PROCEDURES, REVISED PATERNITY ESTABLISHMENT PROCESSES, AVAILABILITY OF SOCIAL SECURITY NUMBERS, EXPANDED ACCESS TO PUBLIC AND PRIVATE SOURCES OF INFORMATION FOR LOCATE PURPOSES, AVAILABILITY OF OTHER AUTOMATED LOCATE SOURCES, WORK REQUIREMENTS FOR PARENTS OWING SUPPORT, ENHANCED INTERSTATE ENFORCEMENT PROCEDURES INVOLVING INTERSTATE LIENS AND SUBPOENAS, AND EXPANDED LICENSE SUSPENSION PROCEDURES TO INCLUDE RECREATIONAL LICENSES; PROVIDING THAT ADMINISTRATIVE ORDERS HAVE FULL FORCE AND EFFECT WITHOUT FILING THEM WITH THE DISTRICT COURT; REVISING ADMINISTRATIVE REGISTRATION PROCEDURES; GENERALLY REVISING THE UNIFORM INTERSTATE FAMILY SUPPORT ACT TO MAKE CHANGES REQUIRED BY THE FEDERAL ACT; AMENDING SECTIONS 19-2-1004, 19-18-612, 19-19-504, 19-20-706, 19-21-212, 25-13-608, 37-1-307, 40-1-107, 40-4-105, 40-4-204, 40-4-206, 40-5-103, 40-5-149, 40-5-151, 40-5-158, 40-5-161, 40-5-162, 40-5-163, 40-5-164, 40-5-173, 40-5-186, 40-5-188, 40-5-189, 40-5-194, 40-5-195, 40-5-196, 40-5-201, 40-5-203, 40-5-206, 40-5-210, 40-5-225, 40-5-226, 40-5-227, 40-5-232, 40-5-233, 40-5-235, 40-5-236, 40-5-237, 40-5-263, 40-5-264, 40-5-271, 40-5-274, 40-5-302, 40-5-303, 40-5-304, 40-5-305, 40-5-306, 40-5-307, 40-5-308, 40-5-309, 40-5-310, 40-5-312, 40-5-313, 40-5-314, 40-5-315, 40-5-403, 40-5-404, 40-5-412, 40-5-413, 40-5-414, 40-5-421, 40-5-423, 40-5-443, 40-5-701, 40-5-702, 40-5-703, 40-5-704, 40-5-709, 40-5-710, 40-5-711, 40-6-102, 40-6-105, 40-6-111, 40-6-115, 40-6-116, 40-6-117, 50-15-210, 50-15-223, 50-15-403, 53-2-613, 61-5-107, 87-1-102, 87-2-106, AND 87-2-202, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 2] grants the department of public

1 health and human services authority to adopt rules to implement [sections 1 through 11]. The rules should
2 at a minimum address:

- 3 (1) routine procedural and operational matters not provided for in [sections 1 through 11]; and
4 (2) supplementary information necessary for the efficient and effective operation of the child
5 support information and processing unit. The department should weigh the need for the information against
6 the personal intrusiveness of the requested information and the difficulty of obtaining the information.
7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
9

10 **NEW SECTION. Section 1. Definitions.** As used in [sections 1 through 11], unless the context
11 requires otherwise, the following definitions apply:

12 (1) "Date of hire" means the first day that an employee starts work for which the employee is
13 owed compensation by the payor of income.

14 (2) "Department" means the department of public health and human services provided for in
15 2-15-2201.

16 (3) (a) "Employee" means a person 18 years of age or older who performs labor in this state for
17 an employer in this state for compensation and for whom the employer withholds federal or state tax
18 liabilities from the employee's compensation.

19 (b) The term does not include an employee of a federal or state agency performing intelligence or
20 counterintelligence functions if the head of the agency has determined that reporting pursuant to [section
21 9] with respect to the employee could endanger the safety of the employee or compromise an ongoing
22 investigation or intelligence mission.

23 (4) "Employer" means a person, firm, corporation, association, governmental entity or labor
24 organization that engages an employee for compensation and withholds federal or state tax liabilities from
25 the employee's compensation.

26 (5) "Foreign support order" means a support order entered or last modified by a court or
27 administrative agency of another state, the District of Columbia, the Commonwealth of Puerto Rico, a
28 territory or insular possession subject to the jurisdiction of the United States, an Indian tribe, or a foreign
29 jurisdiction.

30 (6) "Income withholding" generally means procedures for directing a payor to withhold from an

obligor's income an amount sufficient to pay the obligor's support obligation and to defray arrears that are or may become due. Specifically:

(a) when preceded by "IV-D", income withholding means the procedures set out in Title 40, chapter 5, part 4; and

(b) when preceded by "non IV-D", income withholding means those cases in which an immediate income-withholding order is issued under 40-5-315 after January 1, 1994.

(7) "Interstate case" means a case referred to the department by, or from the department to, another IV-D agency.

(8) "Labor organization" means a labor union, union local, union affiliate, or union hiring hall.

(9) "Obligee" means the payee under a support order or a person or agency entitled to receive support payments.

(10) "Obligor" means a person who is obligated to pay support under a support order.

(11) "Payor" means:

(a) an employer or person engaged in a trade or business in this state who engages an employee for compensation; or

(b) when used in context with income withholding, means a person, firm, corporation, association, employer, trustee, political subdivision, state agency, or agent paying income to an obligor on a periodic basis.

(12) "Rehire" means the first day, following a termination of employment, that an employee begins to again perform work or provide services for a payor. Termination of employment does not include temporary separations from employment, such as unpaid medical leave, an unpaid leave of absence, or a temporary or seasonal layoff.

(13) "Support order" means a judgment, decree, or order, whether temporary or final, that:

(a) is for the benefit of a child or a state agency;

(b) provides for monetary support, health care, arrearages, or reimbursement;

(c) may include related costs and fees, interest, and similar other relief; and

(d) may include an order for maintenance to be paid to a former spouse when the former spouse is the custodial parent of a child for whom child support is awarded under the same judgment decree or order.

(14) "IV-D" or "IV-D case" means a case in which the department is providing services under the

1 provisions of Title IV-D of the Social Security Act and the regulations promulgated under that act. A IV-D
2 case also includes a case in which the department is collecting a support debt assigned to this or another
3 state under Title IV-D.

4
5 **NEW SECTION. Section 2. Child support information and processing unit.** (1) The department
6 shall establish and maintain a centralized child support case registry and payment processing unit. The
7 purpose of this unit is to facilitate mass case processing by utilizing computer technology to identify parents
8 and their income and to initiate automated procedures to collect child support as it becomes due and
9 payable.

10 (2) The case registry must include a data base of information concerning child support orders, all
11 cases receiving IV-D services, and all district court and administrative cases with support orders entered
12 or modified after October 1, 1998.

13 (3) The case registry must use automated systems to obtain information from federal, state, and
14 local data bases with regard to the location of obligors and their income and assets. Upon request, this
15 information may be shared with the courts and child support enforcement agencies of this and other states
16 for the purpose of establishing paternity and establishing and enforcing child support obligations.

17 (4) To assist creditors, credit managers, and others who need timely verification of the existence
18 of child support liens in IV-D cases, the case registry must include a directory of liens, which must include
19 liens against an obligor's real and personal property filed by the department with other agencies and lien
20 registries. Information in the lien registry may be made available through automated systems, which may
21 include voice response units.

22 (5) Each IV-D case with a child support order must be electronically monitored so that when a
23 timely payment of support is not made, enforcement action may be taken. To accomplish this purpose,
24 payments due under a child support order must be paid to the department for processing and disbursement.

25 (6) In either a IV-D income-withholding case in this state or a state non IV-D case, if immediate
26 income withholding is authorized after January 1, 1994, an employer or other payor of income shall pay
27 all support withheld from an obligor's income to one centralized location as specified by the department.

28 (7) To facilitate automated disbursement of support payments, automated enforcement actions,
29 and service of notice when required, an obligor or obligee must be directed to provide, and update as
30 necessary, information sufficient to locate the obligor and obligee and to locate the obligor's income and

1 assets.

2 (8) An employer or labor organization shall report a newly hired or returning employee. Information
3 reported by an employer must be electronically compared to the information data base to align an obligor
4 who owes a duty of support with a source of income. When a match is revealed in a IV-D case, a notice
5 will, if appropriate to the case, be promptly transmitted to the employer directing the employer to
6 commence withholding for the payment of the obligor's support obligation.

7 (9) The department may enter into contracts or cooperative agreements with any person, business,
8 firm, corporation, or state agency to establish, operate, or maintain the case registry and payment
9 processing unit or any function or service afforded by the unit, provided that:

10 (a) the department is ultimately responsible for operation of the case registry and payment
11 processing unit, including any function or service afforded by the unit; and

12 (b) the costs charged to the department under the contract or cooperative agreement may not
13 exceed the actual costs that the department would have incurred without the contract or cooperative
14 agreement.

15 (10) The department may adopt rules to implement [sections 1 through 11].

16

17 **NEW SECTION. Section 3. Case registry -- abstracts -- information required -- mandatory updating.**

18 (1) There must be registered in the case registry an abstract of:

19 (a) each case, including interstate cases, receiving IV-D services provided by the department;

20 (b) each support order entered and each modification of an existing support order made in this state
21 after October 1, 1998; and

22 (c) each subsequent order or action establishing, modifying, adjusting, granting relief from,
23 terminating, or otherwise affecting a support order in a registered case.

24 (2) Each abstract must include:

25 (a) the name, sex, social security number, other identification numbers, if any, date of birth,
26 driver's license number, telephone number, and residential and mailing addresses of the parents;

27 (b) the child's name, date of birth, sex, social security number, if any, and residential address if
28 different from that of the child's custodian;

29 (c) the name and location of the obligee if the obligee is a person or agency other than the child's
30 parent;

1 (d) the name, address, and telephone number of the obligor's employer or of another payor of
2 income to the obligor;

3 (e) if the child is covered by a health or medical insurance plan, the name of the insurance carrier
4 or health benefit plan, the policy identification number, the name of the persons covered, and any other
5 pertinent information regarding coverage, or if the child is not covered, information as to the availability of
6 coverage for the child through the obligor's and obligee's employers; and

7 (f) any other information that the department considers relevant and requires by rule.

8 (3) The abstract of a support order must include:

9 (a) the amount of the support payment and supplemental support payments, if any, for each child
10 and the amount of spousal maintenance if ordered in the same case;

11 (b) the specific day or dates the payment is due;

12 (c) the inclusive dates of the support obligation;

13 (d) the terms of any condition that may affect the amount of the payment, the due date, or the
14 obligation to pay support;

15 (e) each subsequent judgment for support arrears and the amounts of any interest, late payment
16 penalties, and fees included in the judgment;

17 (f) any specific child support lien imposed against real or personal property of the obligor;

18 (g) the terms of any medical and health coverage provision for the child; and

19 (h) the name and county of the judicial district or the name and address of the agency where the
20 record of the case is located and the cause number or case identification number for the case.

21 (4) (a) For each IV-D case with a support order registered in the case registry, there must be a
22 record of the date and the amount of support payments made by the obligor, dates and amounts of support
23 collected from other sources, dates of distribution of support payments, names and locations of persons
24 or agencies to whom support payments and collections were distributed, and the balance of support owed
25 by the obligor.

26 (b) Except as provided in subsection (5), the department need not maintain payment records in a
27 non IV-D case.

28 (5) A copy of each non IV-D income-withholding order must be included in the case registry. For
29 each registered income-withholding order, there must be a record of payments received by the department
30 from the payor under the income-withholding order, the date and amount of each payment, the date the

1 department distributed the payment, and the person or agency to whom the payment was distributed.

2 (6) The statistical report required by the department under 50-15-302 may be combined with and
3 made a part of the abstract of support order form.

4 (7) (a) Each support order entered or modified in this state after October 1, 1998, must include a
5 requirement that the obligor and obligee update, as necessary, the information included in the abstract
6 under subsection (2).

7 (b) The order must also provide that in a subsequent child support enforcement action, upon
8 sufficient showing that diligent effort has been made to ascertain the location of the obligor or obligee, the
9 court or agency taking the enforcement action may consider the due process requirements for notice and
10 service of process to be met with respect to the party upon delivery of written notice by regular mail to the
11 most recent address or employer address reported to the case registry.

12 (c) If the support order does not include the provisions required by subsections (7)(a) and (7)(b)
13 or if the support order was entered or last modified in this state before October 1, 1998, the department
14 may give written notice of the provisions to the obligor and obligee. Upon receipt of the notice, the
15 provisions have the same force and effect on the obligor and obligee as if included in the support order.

16
17 **NEW SECTION.** **Section 4. Registration procedures.** (1) In a court case, before a decree,
18 judgment, or order may be docketed, the parties to the action or their attorneys shall prepare, on a form
19 prescribed by the department, the abstract of a support order required under [section 3(3)] and deliver it
20 to the clerk of court whenever:

21 (a) a support order is entered or an existing order is modified after October 1, 1998;

22 (b) in an existing case not included under subsection (1)(a), the department has filed a notice of
23 IV-D services and a support order is established, modified, adjusted, terminated, or otherwise affected or
24 relief is granted from the support order; and

25 (c) in each case with a previously registered abstract, there is an action subsequent to registration
26 that establishes, modifies, adjusts, terminates, grants relief from, or otherwise affects the support order
27 in a registered case.

28 (2) The clerk of court shall deliver a completed abstract and copy of a non IV-D income-withholding
29 order to the department within 5 working days of the receipt of an abstract or issuance of the non IV-D
30 income-withholding order.

1 (3) (a) The department shall prepare and register abstracts of administrative support orders
2 established by the department.

3 (b) For a foreign support order involving IV-D services from the department, the department shall
4 attempt to acquire the information necessary for completion of the abstract from the person, court, or
5 agency requesting IV-D services, and to the extent the information is provided, the department shall enter
6 the information into the registry.

7 (4) As an alternative to the preparation and delivery of abstracts and non IV-D income-withholding
8 orders to the department, the department may enter into cooperative agreements with district courts, clerks
9 of court, or other appropriate agencies of this and other states to gather and transmit the information
10 through electronic information networking systems.

11
12 **NEW SECTION. Section 5. Centralized payment center -- mandatory payments to center.** (1)
13 Payments due under a support order must be paid through the department for processing and distribution
14 to the person or agency entitled to receive the payment whenever:

15 (a) the case is receiving IV-D services; or

16 (b) the support obligation is payable through non IV-D income withholding.

17 (2) A support order entered or modified in this state after October 1, 1998, that excludes the
18 obligor from paying support through income withholding must provide that:

19 (a) if the case is or later becomes a IV-D case or if support becomes payable through IV-D or non
20 IV-D income withholding, support payments must be paid through the department; and

21 (b) a payment that is not made to the department does not constitute payment of support or credit
22 toward satisfaction of the support obligation.

23 (3) (a) If a support order does not include the provisions required by subsection (2) or directs
24 payment of support to a payee other than the department, the department may give written notice to the
25 obligor and obligee directing or redirecting payments to the department. After receipt of the notice,
26 payment other than as directed does not constitute payment of support or credit toward satisfaction of the
27 support obligation.

28 (b) An obligor who redirects payments to the department is not liable to the obligee or answerable
29 to the court for not making payments as directed by the court.

30 (c) While support is required to be paid through the department, the notice directing or redirecting

1 payments to the department may not be superseded by any subsequent order of a court or agency directing
2 the obligor to make payments other than to the department.

3 (4) After the obligor has been ordered or directed to make payments to the department under this
4 section, the obligor shall make the payments to the department and is not entitled to credit against a
5 support obligation for payment made to a person or agency other than the department.

6 (5) (a) When the obligor is paying support through IV-D or non IV-D income withholding, the
7 income-withholding order must direct the payor to make the payments through the department.

8 (b) If a payor is directed by the income-withholding order to make payments to a payee other than
9 the department, the department may redirect the payments to the department by written order to the
10 employer or payor. The order supersedes any prior, inconsistent court or agency order.

11 (c) For as long as income withholding is appropriate to the case, the directive to the payor to make
12 payments to the department may not be superseded by any subsequent order of a court or agency directing
13 payments to any other payee.

14 (6) Payments of support that are received by the department in interstate cases or as the result
15 of a writ of execution, warrant for distraint, state and federal tax offset, or similar enforcement remedy
16 must be processed through the case management and payment processing unit.

17 (7) (a) If, through a private collection action, an obligee obtains a payment of support that must
18 be processed and distributed through the case management and payment processing unit, the obligee shall
19 forward the payment to the department within 5 working days of the receipt of the payment.

20 (b) If the department takes an enforcement action against the obligor because the obligee failed
21 to timely forward a payment of support under subsection (7)(a), the obligee is liable in a civil action to the
22 obligor for the amount that should have been forwarded to the department.

23 (8) (a) Payments made to the department under this section must be by cash, personal or business
24 check, money order, automatic bank account withdrawal, certified funds, electronic funds transfer services,
25 or any other means acceptable to the department.

26 (b) Payments may not be credited to the obligor's child support obligation until actually received
27 by the department.

28 (c) The withholding of income by a payor or employer under an order to withhold issued under Title
29 40, chapter 5, part 3 or 4, is not alone sufficient for credit against an obligor's support obligation.
30 Payments withheld from an obligor's income that are not actually received by the department may not be

1 credited to the obligor's child support obligation. The payor or employer is liable to the obligor in a civil
2 action initiated by the obligor for the amount withheld but not paid to the department.

3 (d) A check presented to the department as payment, whether by the obligor, the obligor's
4 employer, or another payor on the obligor's behalf, that is dishonored by the issuing bank may not be
5 credited to the obligor's child support obligation.

6 (e) A payment made out to or delivered to any other person or agency other than to the department
7 may not be credited to the obligor's support obligation.

8 (9) An uncredited payment under this section is considered as still owed by the obligor and may
9 be collected using any remedy available under law.

10
11 **NEW SECTION. Section 6. Distribution of payments.** (1) Support payments processed through
12 the case processing unit must be promptly disbursed unless one of the following circumstances or a similar
13 circumstance prevents prompt distribution:

14 (a) the location of the obligee is unknown;

15 (b) the support debt is in litigation or, in an income-withholding case, the income-withholding action
16 is contested; or

17 (c) the department receives a payment that does not include sufficient information to identify the
18 case or the obligee.

19 (2) A disbursement must comply with department rules for distribution in IV-D cases.

20 (3) If the department is unable to make a distribution because the obligee's location is unknown,
21 the department shall return the payment to the obligor.

22 (4) If a payment properly distributed under this section is later determined by a court or by
23 department decision to be refundable to the obligor for any reason, except for when the department is the
24 obligee, the department need not pay the refund or recover the refunded amount from the obligee or from
25 any person or agency to whom the amount was distributed.

26 (5) If the department distributes a support payment in error or if a distribution is made to a person,
27 obligee, or agency not entitled to retain the distributed amount, the department may obtain restitution by
28 means of a setoff against future payments, including arrears payments, received on behalf of the person,
29 obligee, or agency. A setoff against future payments of current support is limited to 10% of the payment.

1 **NEW SECTION. Section 7. Monitor payments -- enforcement.** The department shall monitor all
2 IV-D cases in the case registry and payment processing unit to promptly identify failures to make timely
3 payment of support. If payment is not timely made, the department may:

4 (1) determine why a timely payment was not received and take any action the department
5 considers appropriate if there is an order to withhold income issued to a current payor;

6 (2) promptly transmit an income-withholding order to the obligor's payor if the obligor is not
7 currently subject to income withholding; or

8 (3) promptly transmit an income-withholding order upon receipt of information identifying a payor
9 if a payor was formerly unknown; and

10 (4) take any additional enforcement action the department considers appropriate in all cases with
11 an identified delinquency.

12
13 **NEW SECTION. Section 8. Certification of records.** (1) Copies, including optically scanned copies,
14 of support payment records, abstracts, and any supporting documents maintained by the case registry and
15 payment processing unit, when certified by a designated employee of the department, must, without further
16 proof or foundation, be admitted into evidence in any legal proceedings.

17 (2) Support payment records for a case maintained in the case registry and payment processing
18 unit constitute prima facie evidence of the amount of support paid and arrearages that have accrued since
19 the department began to process and monitor support payments through the unit.

20 (3) Copies of judicial orders and other documents on file with a clerk of court, when transmitted
21 to the department by the clerk by facsimile or other electronic means, are rebuttably presumed to be true
22 and correct copies of the original documents and may be offered into evidence, without authentication or
23 verification, in a department proceeding under [sections 1 through 11]. A person contesting the accuracy
24 of the document may rebut the presumption with a certified copy of the original document.

25
26 **NEW SECTION. Section 9. Directory of new hires -- employer reporting requirements -- penalties.**
27 (1) (a) An employer doing business in the state shall report to the department the hiring or rehiring of an
28 employee to whom the employer anticipates paying income.

29 (b) An employer shall report the hiring or rehiring of an employee by submitting a copy of the
30 employee's completed W-4 form or its informational equivalent as may be approved by the department.

1 The report must include the employee's name, date of hire, social security number, and residential and
2 mailing addresses, and the name, address, and federal identification number of the employer. The report
3 may include the employee's date of birth.

4 (c) If an employer provides health or medical insurance coverage for an employee and the coverage
5 may be extended to the employee's children, the employer may, along with the date the employee becomes
6 eligible for coverage, provide that information as part of the new hire report under subsection (1)(b).

7 (2) Transmission of the reports must be by first-class mail, electronic or magnetic transmission,
8 including facsimile transmission, or any other format agreed to by the department. Written reports must
9 be submitted within 20 days of the employee's date of hire or rehire. Reports transmitted electronically
10 or magnetically may be made by two transmissions monthly, if necessary, not less than 12 or more than
11 16 days apart.

12 (3) An employer who has employees in two or more states and who transmits new hire reports
13 electronically or magnetically may comply with this section by designating one of the states in which there
14 is an employee and transmitting the report of new hires to that state. A multistate employer who elects
15 to report to only one state shall give written notice of the state to which the employer will transmit new
16 reports. As required by 42 U.S.C. 653a (b)(1)(B), this notice must be transmitted to the secretary of the
17 federal department of health and human services.

18 (4) (a) An employer failing to report is subject to a civil penalty of up to \$24 for each day that the
19 employer fails to provide the report.

20 (b) If the failure is the result of a conspiracy between the employer and the employee to not supply
21 the report or to supply a false or incomplete report, the employer is subject to an additional penalty of \$495
22 for each violation.

23 (c) An amount imposed as a penalty may be collected by any remedy available to the department
24 for the enforcement of child support obligations.

25 (5) An employer providing reports is not liable to the employee or contractor for the disclosure or
26 any subsequent use by the processing center of the information.

27 (6) An employer required to report under this section may charge each reported employee a fee
28 not to exceed \$5 for each report to cover the cost of reporting. The fee may be withheld from payment
29 of wages or other income to the employee.

30

1 **NEW SECTION. Section 10. Information and records -- disclosure.** (1) Information in the case

2 registry and payment processing unit that contains the social security number, residential address, income
3 sources, and employers of an obligee or obligor and the employee W-4 forms or similar forms transmitted
4 to the department is private and confidential and may be disclosed only to:

5 (a) courts, tribunals, and administrative agencies in this and any other state having appropriate
6 jurisdiction over child support, custody, visitation, and welfare;

7 (b) public assistance and medicaid agencies and the revenue, workers' compensation, and
8 employment security programs of this or any other state for the purpose of determining eligibility, continued
9 eligibility, or fraud by programs operated by those agencies and programs;

10 (c) the obligor or obligee who is the subject of the information;

11 (d) the state vital statistics agency for the purposes of 50-15-302; and

12 (e) a person, agency, or entity if the release is consistent with 40-5-206 and also consistent with
13 any allowable purpose under Title IV-D and other state and federal law pertaining to privacy safeguards and
14 confidentiality of the information.

15 (2) All other information and records in the case registry and payment processing unit may be
16 disclosed upon request of any person or agency, but a person or agency may not make use of the
17 information or compile a list of obligee or obligor names for any commercial or political purpose.

18
19 **NEW SECTION. Section 11. Automated access to financial records -- confidentiality -- no liability.**

20 (1) For the purposes of this section, unless the context otherwise indicates, the following definitions apply:

21 (a) "Account" means a savings, checking, deposit and withdrawal, demand deposit, money market,
22 profit and loss, or time deposit account opened by a depositor in a financial institution.

23 (b) "Depositor" means a person, share account holder, sole proprietor, or joint owner of an account
24 in a financial institution in this state.

25 (c) "Financial institution" means a corporation incorporated to conduct the business of receiving
26 money on deposit or transacting a trust or investment business, as referred to in 32-1-102, including a
27 commercial bank as defined in 32-1-105, savings bank as defined in 32-1-106, trust company as defined
28 in 32-1-107, and investment company as defined in 32-1-108. The term also means a building and loan
29 association as defined in 32-2-101, credit union as defined in 32-3-102, Montana development corporation
30 as referred to in 32-4-101, or consumer type loan business as defined in 32-5-102.

1 (d) "Obligor" means a person who owes a debt for child, spousal, or medical support as determined
2 by the department or as specified by order of a tribunal of competent jurisdiction, the amount of which
3 exceeds \$500 or a total of 3 months debt, whichever is less.

4 (2) (a) Upon written request from the department, a financial institution shall run a data match of
5 the department's list of obligors with the financial institution's depositors and provide the information in
6 a computer format accessible by the financial institution. In the alternative, upon a showing by the financial
7 institution of efficiency, the financial institution may provide the department with a list of the financial
8 institution's depositors in a computer format accessible by the department for a data match to the
9 department's list of obligors. The department may not request the information referred to in this subsection
10 from a financial institution more than once in each calendar quarter.

11 (b) The information on an obligor found to be a depositor at a financial institution must include the
12 obligor's full name, social security number, and account number. If the information is normally kept by the
13 financial institution, it must also include the mailing address, employment, and any other identifying
14 information on the obligor.

15 (c) The financial institution shall provide the requested information within 30 days of the request
16 from the department.

17 (3) The department shall run a computer match of all obligors with the information from the
18 financial institution required in subsection (2) within 30 days. A match between an obligor and the
19 information from the financial institution must be compiled by the department and returned to the financial
20 institution for additional information, including, but not limited to:

21 (a) verification of the obligor's full name and social security number;

22 (b) the financial institution's account number;

23 (c) the nature of the account or accounts held by the obligor;

24 (d) the funds available in the account less any preexisting encumbrance held by the financial
25 institution; and

26 (e) any taxes, penalties, interest, or other costs to be legally imposed on the account if the account
27 is accessed prior to a maturity date.

28 (4) The amounts available in an obligor's account do not include amounts available pursuant to
29 overdraft coverage offered by the financial institution.

30 (5) The financial institution shall honor a subsequent appropriate lien from the department sent to

1 the financial institution.

2 (6) (a) A financial institution receiving a data request, data match, or lien from the department may
3 not provide notice to an obligor identified in the information submitted to the department. Failure to provide
4 notice does not constitute a violation of the financial institution's duty of good faith to its customers.

5 (b) A notice given by a financial institution to an obligor identified by the department subjects the
6 financial institution to the contempt authority of the department under 40-5-226.

7 (7) The department shall pay a financial institution a reasonable fee for providing the information
8 required in subsection (2), not to exceed the actual documented costs incurred by the financial institution.

9 (8) Information requested by the department and provided by a financial institution under this
10 section is confidential and may be used only for IV-D purposes. Use of information for any other purpose
11 without the authorization of the department subjects the user to a civil penalty of not more than \$500 per
12 name per use.

13 (9) A financial institution is not liable to a person for:

14 (a) a disclosure of information to the department under this section;

15 (b) encumbering or surrendering assets held by the financial institution in response to a notice of
16 lien or levy issued by the department; or

17 (c) any other action taken in good faith to comply with the requirements of this section.
18

19 **NEW SECTION. Section 12. Order to seek employment.** (1) In a proceeding under this chapter
20 to enforce a support order, if an obligor claims inability to pay support because of unemployment or
21 underemployment, the department may order the obligor to seek suitable employment and make progress
22 reports on that activity to the department unless the obligor proves by a preponderance of the evidence
23 that:

24 (a) the obligor is engaged in diligent, bona fide efforts to seek suitable employment; or

25 (b) the obligor, due to illness, injury, or other incapacity, does not have the ability to seek
26 employment or to engage in work if employment is offered to the obligor.

27 (2) The seek-work order must direct the obligor to:

28 (a) seek employment within a specified amount of time;

29 (b) file a weekly report with the department showing at least five new attempts by the obligor to
30 find employment; and

1 (c) include in the report filed under subsection (2)(b) the name, address, and telephone number of
2 the employers with whom the obligor sought employment and the name of the individuals the obligor
3 contacted to inquire about or apply for employment.

4 (3) The order is effective for 6 months or until the obligor finds work, whichever occurs first.

5 (4) Failure to report or otherwise comply with a seek-work order, absent good cause, is evidence
6 of willful nonpayment of child support for which the obligor may be determined to have committed the
7 offense of nonsupport under 45-5-621 or may be held in civil contempt under Title 40, chapter 5, part 6.
8 The department may enforce the order as provided in 40-5-226.

9 (5) For the purpose of this section, "suitable employment" is employment commensurate with the
10 obligor's education, training, professional or occupational qualifications, job skills, work history, and the
11 availability of employment opportunities in the community, or in the absence of commensurate employment,
12 suitable employment is any employment that the obligor is capable of performing.

13
14 **NEW SECTION. Section 13. Income-withholding orders of another state -- employer compliance**
15 **-- employer immunity -- penalties for noncompliance.** (1) An income-withholding order issued in another
16 state may be sent to the person or entity defined as the obligor's employer under the income-withholding
17 laws of this state without first filing a petition or comparable pleading or registering the order with a tribunal
18 of this state.

19 (2) (a) Upon receipt of an income-withholding order, the obligor's employer shall immediately
20 provide a copy of the order to the obligor.

21 (b) The employer shall treat an income-withholding order issued in another state that appears
22 regular on its face as if it had been issued by a tribunal of this state.

23 (3) Except as provided by subsections (4) and (5), the employer shall withhold and distribute the
24 funds as directed in the income-withholding order by complying with the terms of the order that specify:

25 (a) the duration and the amount of periodic payments of current child support, stated as a sum
26 certain;

27 (b) the person or agency designated to receive payments and the address to which the payments
28 are to be forwarded;

29 (c) medical support, whether in the form of periodic cash payment, stated as a sum certain, or by
30 ordering the obligor to provide health insurance coverage for the child under a policy available through the

1 obligor's employment;

2 (d) the amount of periodic payments of fees and costs for a support enforcement agency, the
3 issuing tribunal, and the obligee's attorney, stated as sums certain; and

4 (e) the amount of periodic payments of arrears and interest on arrears, stated as sums certain.

5 (4) An employer shall comply with the law of the state of the obligor's principal place of
6 employment for withholding from income with respect to:

7 (a) the employer's fee for processing an income-withholding order;

8 (b) the maximum amount permitted to be withheld from the obligor's income; and

9 (c) the times within which the employer must implement the income-withholding order and forward
10 the child support payment.

11 (5) An obligor's employer who receives multiple income-withholding orders with respect to the
12 earnings of the obligor satisfies the terms of the multiple orders if the employer complies with the law of
13 the state of the obligor's principal place of employment to establish the priorities for withholding and
14 allocating income withheld for multiple child support obligees.

15 (6) An employer who complies with an income-withholding order issued in another state in
16 accordance with this section is not subject to civil liability to an individual or agency with regard to the
17 employer's withholding of child support from the obligor's income.

18 (7) An employer who willfully fails to comply with an income-withholding order issued by another
19 state and received for enforcement is subject to the same penalties that may be imposed for noncompliance
20 with an order issued by a tribunal of this state.

21 (8) (a) An obligor may contest the validity or enforcement of an income-withholding order issued
22 in another state and received directly by an employer in this state in the same manner as if the order had
23 been issued by a tribunal of this state. Choice of law under 40-5-187 applies to the contest.

24 (b) The obligor shall give notice of the contest to:

25 (i) a support enforcement agency providing services to the obligee;

26 (ii) each employer that has directly received an income-withholding order; and

27 (iii) the person or agency designated to receive payments in the income-withholding order or, if a
28 person or agency is not designated, to the obligee.

29
30 **NEW SECTION. Section 14. Execution or withholding for support obligation.** (1) Benefits in the

1 retirement systems provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income
2 withholding for the payment of a participant's support obligation.

3 (2) For purposes of this section:

4 (a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the
5 department of public health and human services when providing support enforcement services under Title
6 IV-D of the Social Security Act.

7 (b) "Income withholding" means an income-withholding order issued under the provisions of Title
8 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in [section
9 13].

10 (c) "Participant" means a member or an actual or potential beneficiary, survivor, or contingent
11 annuitant of a retirement system designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

12 (d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

13 (3) The execution or income-withholding order may not require:

14 (a) a type or form of benefit, option, or payment not available to the affected participant under the
15 appropriate retirement system; or

16 (b) an amount or duration of payment greater than that available to a participant under the
17 appropriate retirement system.

18 (4) The execution or income-withholding order may only provide for payment as follows:

19 (a) Service retirement benefit payments or withdrawals of member contributions may be
20 apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of
21 no more than the amount payable to the participant.

22 (b) The maximum amount of disability or survivorship benefits that may be apportioned and paid
23 under this section is the monthly benefit amount that would have been payable on the date of termination
24 of service if the member had retired without disability or death.

25 (c) Retirement benefit adjustments for which a participant is eligible after retirement may be
26 apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the
27 same ratio as existing benefit payments.

28 (d) Payments must be limited to the life of the appropriate participant. The duration of payments
29 under this section may be further limited only to a specified maximum time or the life of a specified
30 participant. Payments may also be limited to a specific amount per month if the number of payments is

1 specified.

2
3 **NEW SECTION. Section 15. Execution or withholding for support obligation.** (1) Benefits in the
4 retirement system are subject to execution and income withholding for the payment of a participant's
5 support obligation.

6 (2) For purposes of this section:

7 (a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the
8 department of public health and human services when providing support enforcement services under Title
9 IV-D of the Social Security Act.

10 (b) "Income withholding" means an income-withholding order issued under the provisions of Title
11 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in [section
12 13].

13 (c) "Participant" means a member or an actual or potential beneficiary, survivor, or contingent
14 annuitant of a retirement system designated pursuant to this chapter.

15 (d) "Support obligation" has the meaning provided in 40-5-403 for support order.

16 (3) The execution or income-withholding order may not require:

17 (a) a type or form of benefit, option, or payment not available to the affected participant under the
18 retirement system; or

19 (b) an amount or duration of payment greater than that available to a participant under the
20 retirement system.

21 (4) The execution or income-withholding order may only provide for payment as follows:

22 (a) Service retirement benefit payments or withdrawals of member contributions may be
23 apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of
24 no more than the amount payable to the participant.

25 (b) The maximum amount of disability or survivorship benefits that may be apportioned and paid
26 under this section is the monthly benefit amount that would have been payable on the date of termination
27 of service if the member had retired without disability or death.

28 (c) Retirement benefit adjustments for which a participant is eligible after retirement may be
29 apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the
30 same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments under this section may be further limited only to a specified maximum time or the life of a specified participant. Payments may also be limited to a specific amount per month if the number of payments is specified.

Section 16. Section 19-2-1004, MCA, is amended to read:

"19-2-1004. Exemption from taxes and legal process. Except as provided in 19-2-907 and section 14], the right of a person to any benefit or payment from the retirement systems and the money in the pension trust funds is not:

(1) subject to execution, garnishment, attachment, or any other process;

(2) subject to state, county, or municipal taxes except for:

(a) a benefit or annuity received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a refund of a member's regular contributions picked up by an employer after June 30, 1985, as provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, or 19-13-601; or

(3) assignable except as specifically provided in this chapter."

Section 17. Section 19-18-612, MCA, is amended to read:

"19-18-612. Protection of benefits from legal process and taxation -- nonassignability. (1) Any Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, payments made or to be made under this chapter are not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may not assign the right, and the association and trustees may not recognize any assignment or pay over any sum ~~so~~ assigned.

(2) The first \$3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation."

Section 18. Section 19-19-504, MCA, is amended to read:

"19-19-504. Protection of benefits from legal process and taxation. (1) The Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or

1 former spouse who is the custodial parent of the child, the benefits provided for in this part are not subject
2 to execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law
3 and are unassignable except as specifically provided in 19-19-505.

4 (2) The first \$3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received
5 under this part is exempt from state, county, and municipal taxation."

6
7 **Section 19.** Section 19-20-706, MCA, is amended to read:

8 **"19-20-706. Exemption from taxation and legal process.** Except as provided in 19-20-305 and
9 [section 15], the pensions, annuities, or any other benefits accrued or accruing to any person under the
10 provisions of the retirement system and the accumulated contributions and cash and securities in the
11 various funds of the retirement system are:

12 (1) exempted from any state, county, or municipal tax of the state of Montana except for:

13 (a) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined
14 pursuant to 15-30-111(2)(c)(ii); or

15 (b) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer after
16 June 30, 1985, as provided in 19-20-602;

17 (2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or
18 equity, or any other process; and

19 (3) unassignable except as specifically provided in this chapter."
20

21 **Section 20.** Section 19-21-212, MCA, is amended to read:

22 **"19-21-212. Exemption from taxation, legal process, and assessments.** ~~All~~ Except for execution
23 or withholding for the payment of child support or for the payment of spousal support if the child support
24 obligation also includes support for a spouse or former spouse who is the custodial parent of the child,
25 contracts, benefits, and contributions under the optional retirement program and the earnings thereon on
26 the contributions are:

27 (1) except for a retirement allowance received in excess of \$3,600 or adjusted by an amount
28 determined pursuant to 15-30-111(2)(c)(ii), exempt from any state, county, or municipal tax;

29 (2) not subject to execution, garnishment, attachment, or other process;

30 (3) not covered or assessable by an insurance guaranty association; and

1 (4) unassignable except as specifically provided in the contracts."

2
3 **Section 21.** Section 25-13-608, MCA, is amended to read:

4 **"25-13-608. Property exempt without limitation -- exceptions.** (1) A judgment debtor is entitled
5 to exemption from execution of the following:

6 (a) professionally prescribed health aids for the judgment debtor or a dependent of the judgment
7 debtor;

8 (b) benefits the judgment debtor has received or is entitled to receive under federal social security
9 or local public assistance legislation, except as provided in subsection (2);

10 (c) veterans' benefits, except as provided in subsection (2);

11 (d) disability or illness benefits, except as provided in subsection (2);

12 (e) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or
13 will be used to pay for the care;

14 (f) maintenance and child support; and

15 (g) a burial plot for the judgment debtor and ~~his~~ the debtor's family.

16 (2) Veterans' and social security legislation benefits based upon remuneration for employment, as
17 defined in 42 U.S.C. 662(f), and disability benefits are not exempt from execution if the debt for which
18 execution is levied is for:

19 (a) child support; or

20 (b) maintenance to be paid to a spouse or former spouse if the spouse or former spouse is the
21 custodial parent of a child for whom child support is owed or owing and the judgment debtor is the parent
22 of the child."

23
24 **Section 22.** Section 37-1-307, MCA, is amended to read:

25 **"37-1-307. Board authority.** (1) A board may:

26 (a) hold hearings as provided in this part;

27 (b) issue subpoenas and administer oaths in connection with investigations and disciplinary
28 proceedings under this part. Subpoenas must be relevant to the complaint, issued by a majority vote of
29 board members not serving on the screening panel described in subsection (1)(e), and signed by the
30 presiding officer of the board. Subpoenas may be enforced as provided in 2-4-104.

1 (c) authorize depositions and other discovery procedures under the Montana Rules of Civil
2 Procedure in connection with an investigation, hearing, or proceeding held under this part;

3 (d) compel attendance of witnesses and the production of documents. Subpoenas may be enforced
4 as provided in 2-4-104.

5 (e) establish a screening panel that determines whether there is reasonable cause to believe that
6 a licensee has violated a statute or rule justifying disciplinary proceedings. The assigned board members
7 may not subsequently participate in a hearing of the case. The final decision on the case must be made by
8 a majority of the board members who did not serve on the screening panel for the case.

9 (f) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license
10 holder, impose a sanction provided by this chapter.

11 (2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the
12 purpose of obtaining confidential criminal justice information regarding its licensees and license applicants.

13 (3) Each board shall require a license applicant to provide the applicant's social security number
14 as a part of the application."

15
16 **Section 23.** Section 40-1-107, MCA, is amended to read:

17 **"40-1-107. Form of application, license, marriage certificate, and consent.** (1) The director of the
18 department of public health and human services shall prescribe the form for an application for a marriage
19 license, which must include the following information:

20 (a) name, sex, address, social security number, and date and place of birth of each party to the
21 proposed marriage;

22 (b) if either party was previously married, the party's name, and the date, place, and court in which
23 the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

24 (c) name and address of the parents or guardian of each party;

25 (d) whether the parties are related to each other and, if so, their relationship; and

26 (e) the name and date of birth of any child of whom both parties are parents born prior to the
27 making of the application, unless their parental rights and the parent and child relationship with respect to
28 the child have been terminated.

29 (2) The director of the department of public health and human services shall prescribe the forms
30 for the marriage license, the marriage certificate, and the consent to marriage."

1 **Section 24.** Section 40-4-105, MCA, is amended to read:

2 **"40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses.** (1) The
3 verified petition in a proceeding for dissolution of marriage or legal separation ~~shall~~ must allege that the
4 marriage is irretrievably broken and ~~shall~~ must set forth:

5 (a) the age, occupation, and residence of each party and ~~his~~ the party's length of residence in this
6 state;

7 (b) the date of the marriage and the place at which it was registered;

8 (c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably
9 broken in that either:

10 (i) the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding the
11 commencement of this proceeding; or

12 (ii) there is serious marital discord which adversely affects the attitude of one or both of the parties
13 towards the marriage, and there is no reasonable prospect of reconciliation;

14 (d) the names, ages, and addresses of all living children of the marriage and whether the wife is
15 pregnant;

16 (e) any arrangements as to support, custody, and visitation of the children and maintenance of a
17 spouse; and

18 (f) the relief sought.

19 (2) Either or both parties to the marriage may initiate the proceeding.

20 (3) If a proceeding is commenced by one of the parties, the other party must be served in the
21 manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service
22 file a verified response. ~~No~~ A decree may not be entered until 20 days after the date of service.

23 (4) Previously existing defenses to divorce and legal separation, including but not limited to
24 condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

25 (5) The court may join additional parties proper for the exercise of its authority to implement this
26 chapter.

27 (6) The social security number of a person subject to a decree of dissolution or a support order
28 must be recorded in the records relating to the matter."

29
30 **Section 25.** Section 40-4-204, MCA, is amended to read:

1 **"40-4-204. Child support -- orders to address health insurance -- withholding of child support. (1)**

2 In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall
3 order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary
4 for the child's support, without regard to marital misconduct.

5 (2) The court shall consider all relevant factors, including:

6 (a) the financial resources of the child;

7 (b) the financial resources of the custodial parent;

8 (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

9 (d) the physical and emotional condition of the child and the child's educational and medical needs;

10 (e) the financial resources and needs of the noncustodial parent;

11 (f) the age of the child;

12 (g) the cost of day care for the child;

13 (h) any custody arrangement that is ordered or decided upon; and

14 (i) the needs of any person, other than the child, whom either parent is legally obligated to support.

15 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall
16 determine the child support obligation by applying the standards in this section and the uniform child
17 support guidelines adopted by the department of public health and human services pursuant to 40-5-209.
18 The guidelines must be used in all cases, including cases in which the order is entered upon the default of
19 a party and those in which the parties have entered into an agreement regarding the support amount. A
20 verified representation of the defaulting parent's income, based on the best information available, may be
21 used when a parent fails to provide financial information for use in applying the guidelines. The amount
22 determined under the guidelines is presumed to be an adequate and reasonable support award, unless the
23 court finds by clear and convincing evidence that the application of the standards and guidelines is unjust
24 to the child or to any of the parties or is inappropriate in that particular case.

25 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall
26 state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have
27 agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the
28 guideline amount must include a statement of the amount of support that would have ordinarily been
29 ordered under the guidelines.

30 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for

1 the child's support, the court shall state its reasons for not ordering child support.

2 (d) Child support obligations established under this section are subject to the registration and
3 processing provisions of [sections 1 through 11].

4 (4) Each temporary or final district court judgment, decree, or order establishing a child support
5 obligation under this title and each modification of a final order for child support must include a medical
6 support order as provided for in Title 40, chapter 5, part 8.

7 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception
8 is included in the support order, a support obligation established by judgment, decree, or order under this
9 section, whether temporary or final, and each modification of an existing support obligation under 40-4-208
10 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part
11 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides
12 for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the
13 payment of support without need for an amendment to the support order or for any further action by the
14 court.

15 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order
16 must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's
17 income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to
18 include a warning statement in a judgment or order does not preclude the use of withholding procedures.

19 (c) If a support order subject to income withholding is expressed in terms of a monthly obligation,
20 the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's
21 regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this
22 section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's
23 monthly support obligation if the excess support is a result of annualized withholding.

24 (d) If an obligor is exempted from paying support through income withholding, the support order
25 must include a requirement that whenever the case is receiving services under Title IV-D of the Social
26 Security Act, support payments must be paid through the department of public health and human services
27 as provided in [section 5].

28 (6) ~~(a) For the purposes of income withholding under subsection (5), each~~ Each district court
29 judgment, decree, or order that establishes paternity or establishes or modifies a child support obligation
30 must include a provision requiring the ~~parent obligated to pay support to inform parties to promptly file with~~

the court and, ~~if the department of public health and human services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following to update, as necessary, information on:~~

(i) the party's identity, residential and mailing addresses, telephone number, social security number, and driver's license number;

~~(a)(ii) the name, and address, and telephone number of the parent's current party's employer; and~~

~~(b) whether the parent has access to health insurance through an employer or other group; and~~

~~(c) if insurance coverage is available, the health insurance policy information.~~

(iii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the names of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the party's employer.

(b) The order must also require that in any subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or the department of public health and human services, if the department is providing services under Title IV-D of the Social Security Act, may consider due process requirements for notice and service of process met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the court.

(7) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of public health and human services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

(8) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support obligation to be paid, without need for further order of the court, to:

(i) the legal custodian of the minor child;

(ii) (A) any other to a person, organization, or agency having legal to which the legal custodian voluntarily or involuntarily relinquished physical custody of the minor child under a legal assignment of rights; or

1 ~~(B) the court for the benefit of the minor child;~~

2 (iii) any other person, organization, or agency ~~designated as caretaker of the minor child by~~
3 ~~agreement of the legal custodian entitled by law, assignment, or similar reason to receive or collect the child~~
4 ~~support obligation; or~~

5 ~~(iv) any assignee or other person, organization, or agency authorized to receive or collect child~~
6 ~~support.~~

7 (b) When the department of public health and human services is providing services under Title IV-D
8 of the Social Security Act, payment of support must be made through the department for distribution to
9 the person, organization, or agency entitled to the payment.

10 ~~(b)(c)~~ A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject
11 to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order
12 or for any further action by the court."
13

14 **Section 26.** Section 40-4-206, MCA, is amended to read:

15 **"40-4-206. Payment of maintenance or support to court -- handling fee of clerk.** (1) ~~Upon~~ Except
16 as provided in subsection (4), upon its own motion or upon motion of either party, the court may order at
17 any time that maintenance or support payments be made to the clerk of the district court as trustee for
18 remittance to the person entitled to receive the payments.

19 (2) The clerk of the district court shall maintain records of payments received by the clerk listing
20 the amount of payments, the date payments are required to be made, and the names and addresses of the
21 parties affected by the order. The clerk may charge the payor a handling fee of \$2 a payment, which must
22 be in addition to the payment. Any handling fee collected by the clerk under this subsection must be paid
23 into the county general fund unless the county has a district court fund. If the county has a district court
24 fund, the amount must be paid into ~~such~~ that fund.

25 (3) The parties affected by the order shall inform the clerk of the district court of any change of
26 address or of other condition that may affect the administration of the order.

27 (4) When the department of public health and human services is providing services under Title IV-D
28 of the Social Security Act or when income withholding is in effect in an order issued or modified after
29 October 1, 1998, payment of support must be made through the department for distribution to the person,
30 organization, or agency entitled to the payment."

1 **Section 27.** Section 40-5-103, MCA, is amended to read:

2 **"40-5-103. Definitions.** (1) "Child" means an individual, whether over or under the age of majority,
3 who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be
4 the beneficiary of a child support order directed to the parent.

5 (2) "Child support order" means a support order for a child, including a child who has attained the
6 age of majority under the law of the issuing state.

7 (3) "Duty of support":

8 (a) means an obligation imposed or imposable by law to provide support for a child, spouse, or
9 former spouse; and

10 (b) includes an unsatisfied obligation to provide support.

11 (4) "Governor" includes an individual performing the functions of governor or the executive
12 authority of any state covered by this part.

13 (5) "Home state" means the state in which a child lived with a parent or a person acting as parent
14 for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable
15 pleading for support and, if a child is less than 6 months old, the state in which the child lived from birth
16 with a parent or person acting as parent. A period of temporary absence of a parent or person acting as
17 parent is counted as part of the 6-month or other period.

18 (6) "Income" includes:

19 (a) earnings or other periodic entitlements to money from any source; and

20 (b) any other property subject to withholding for support under the law of this state.

21 (7) "Income-withholding order" means an order or other legal process directed to an obligor's
22 employer, as provided in Title 40, chapter 5, parts 3 and 4, or by a tribunal of another state to withhold
23 support from the income of the obligor.

24 (8) "Initiating state" means a state ~~in~~ from which a proceeding is forwarded or in which a
25 proceeding is filed for forwarding to a responding state pursuant to this part or a law or procedure
26 substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform
27 Reciprocal Enforcement of Support Act, or a law or procedure substantially similar to either of those acts,
28 or pursuant to a proceeding initiated by the department of public health and human services under 40-5-263
29 is filed for forwarding to a responding state.

30 (9) "Initiating tribunal" means the authorized tribunal in an initiating state.

1 (10) "Issuing state" means the state in which a tribunal issues a support order or renders a
2 judgment determining parentage.

3 (11) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment
4 determining parentage.

5 (12) "Law" includes decisional and statutory law and rules and regulations having the force of law.

6 (13) "Obligee" means:

7 (a) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support
8 order has been issued or a judgment determining parentage has been rendered;

9 (b) a state or political subdivision to which the rights under a duty of support or a support order
10 have been assigned or that has independent claims based on financial assistance provided to an individual
11 obligee; or

12 (c) an individual seeking a judgment determining parentage of that individual's child.

13 (14) "Obligor" means an individual or the estate of a decedent:

14 (a) who owes or is alleged to owe a duty of support;

15 (b) who is alleged but has not been adjudicated to be a parent of a child; or

16 (c) who is liable under a support order.

17 (15) "Prosecuting attorney" means the public official in the appropriate place who has the duty to
18 enforce criminal laws relating to the failure to provide for the support of any person.

19 (16) "Register" means to file a support order or judgment determining parentage in the registry of
20 foreign support orders.

21 (17) "Registering tribunal" means a tribunal in which a support order is registered.

22 (18) "Responding state" means a state ~~to~~ in which a proceeding is filed or to which a proceeding
23 is forwarded for filing from an initiating state under this part or a law or procedure substantially similar to
24 this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement
25 of Support Act, or a law or procedure substantially similar to either of those acts, or under a proceeding
26 initiated by the department of public health and human services under 40-5-263.

27 (19) "Responding tribunal" means the authorized tribunal in a responding state.

28 (20) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

29 (21) "State" means a state of the United States, the District of Columbia, ~~the Commonwealth of~~
30 Puerto Rico, the Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United

1 States. The term "state" includes an Indian tribe ~~and includes a~~ or a foreign jurisdiction that has enacted
2 a law or established procedures for issuance and enforcement of support orders that are substantially
3 similar to the procedures under this part, the Uniform Reciprocal Enforcement of Support Act, or the
4 Revised Uniform Reciprocal Enforcement of Support Act.

5 (22) (a) "Support enforcement agency" means a public official or agency authorized to seek:

6 (i) enforcement of support orders or laws relating to the duty of support;

7 (ii) establishment or modification of child support;

8 (iii) a determination of parentage; or

9 (iv) to locate obligors or their assets.

10 (b) Support enforcement agency includes:

11 (i) in cases brought under ~~title~~ Title IV-D of the Social Security Act, the department of public health
12 and human services; and

13 (ii) in all other cases, the prosecuting attorney.

14 (23) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to
15 modification, that:

16 (a) is for the benefit of a child, a spouse or a former spouse, or a state or political subdivision;

17 (b) provides for monetary support, health care, arrearages, or reimbursement; and

18 (c) may include related costs and fees, interest, income withholding, attorney fees, and other relief.

19 (24) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish,
20 enforce, or modify support orders or to determine parentage."

21
22 **Section 28.** Section 40-5-149, MCA, is amended to read:

23 **"40-5-149. Continuing, exclusive jurisdiction.** (1) A tribunal of this state issuing a support order
24 consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:

25 (a) as long as this state remains the residence of the obligor, the individual obligee, or the child for
26 whose benefit the support order is issued; or

27 (b) until ~~each individual party has~~ all of the parties who are individuals have filed written consent
28 with the tribunal of this state for a tribunal of another state to modify the order and assume continuing,
29 exclusive jurisdiction.

30 (2) A tribunal of this state issuing a child support order consistent with the law of this state may

1 not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of
2 another state pursuant to this part or a law substantially similar to this part.

3 (3) If a child support order of this state is modified by a tribunal of another state pursuant to this
4 part or a law substantially similar to this part, a tribunal of this state loses its continuing, exclusive
5 jurisdiction with regard to prospective enforcement of the order issued in this state and may only:

6 (a) enforce the order that was modified as to amounts accruing before the modification;

7 (b) enforce nonmodifiable aspects of that order; and

8 (c) provide other appropriate relief for violations of that order that occurred before the effective
9 date of the modification.

10 (4) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of
11 another state that has issued a child support order pursuant to this part or a law substantially similar to this
12 part.

13 (5) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does
14 not create continuing, exclusive jurisdiction in the issuing tribunal.

15 (6) A tribunal of this state issuing a support order consistent with the law of this state has
16 continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support
17 obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another
18 state having continuing, exclusive jurisdiction over that order under the law of that state."
19

20 **Section 29.** Section 40-5-151, MCA, is amended to read:

21 **"40-5-151. Recognition of child support orders.** (1) If a proceeding is brought under this part and
22 only one tribunal has issued a child support order, the order of that tribunal controls and must be
23 recognized.

24 ~~(1)(2)~~ If a proceeding is brought under this part and ~~one~~ two or more child support orders have been
25 issued ~~in~~ by tribunals of this state or another state with regard to ~~an~~ the same obligor and a child, a tribunal
26 of this state shall apply the following rules in determining which order to recognize for purposes of
27 continuing, exclusive jurisdiction:

28 ~~(a) If only one tribunal has issued a child support order, the order of that tribunal must be~~
29 ~~recognized.~~

30 ~~(b)(a) If two or more tribunals have issued child support orders for the same obligor and child and~~

only one of the tribunals would have continuing, exclusive jurisdiction under this part, the order of that tribunal controls and must be recognized.

~~(e)(b)~~ If ~~two or more tribunals have issued child support orders for the same obligor and child and~~ more than one of the tribunals would have continuing, exclusive jurisdiction under this part, an order issued by a tribunal in the current home state of the child controls and must be recognized. However, if an order has not been issued in the current home state of the child, the order most recently issued controls and must be recognized.

~~(d)(c)~~ If ~~two or more tribunals have issued child support orders for the same obligor and child and~~ none of the tribunals would have continuing, exclusive jurisdiction under this part, the tribunal of this state ~~may~~ having jurisdiction over the parties shall issue a child support order, which controls and must be recognized.

(3) If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this state, a party may request a tribunal of this state to determine which order controls and must be recognized under subsection (2). The request must be accompanied by a certified copy of each support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

~~(2)(4)~~ The tribunal that ~~has issued an~~ the controlling order recognized under subsection subsections (1) through (3) is the tribunal ~~having that has~~ continuing, exclusive jurisdiction under 40-5-149.

(5) A tribunal of this state that determines, by order, the identity of the controlling order under subsection (2)(a) or (2)(b) or that issues a new controlling child support order under subsection (2)(c) shall state in that order the basis upon which the tribunal made its determination.

(6) Within 30 days after issuance of the order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order."

Section 30. Section 40-5-158, MCA, is amended to read:

"40-5-158. Proceedings under this part. (1) Except as otherwise provided in this part, 40-5-158 through 40-5-166, 40-5-170 through 40-5-178, 40-5-180, and 40-5-183 apply to all proceedings under

1 this part.

2 (2) This part provides for the following proceedings:

3 (a) establishment of an order for spousal support or child support ~~pursuant to 40-5-179;~~

4 (b) enforcement of a support order and income-withholding order of another state without
5 registration;

6 (c) registration of an order for spousal support or child support of another state for enforcement
7 ~~pursuant to 40-5-184 through 40-5-195;~~

8 (d) modification of an order for child support or spousal support issued by a tribunal of this state
9 ~~pursuant to 40-5-147 through 40-5-150;~~

10 (e) registration of an order for child support of another state for modification ~~pursuant to 40-5-184~~
11 ~~through 40-5-195;~~

12 (f) determination of parentage ~~pursuant to 40-5-196;~~ and

13 (g) assertion of jurisdiction over nonresidents pursuant to 40-5-145 and 40-5-146.

14 (3) If the tribunal is the department of public health and human services, this part includes the
15 administrative remedies under this chapter.

16 (4) An individual or a support enforcement agency may commence a proceeding authorized under
17 this part by filing a petition in an appropriate initiating tribunal for forwarding to a responding tribunal or
18 by filing a petition or a comparable pleading directly in a tribunal of another state that has or can obtain
19 personal jurisdiction over the respondent."
20

21 **Section 31.** Section 40-5-161, MCA, is amended to read:

22 **"40-5-161. Duties of initiating tribunal.** (1) Upon the filing of a petition authorized by this part,
23 an initiating tribunal shall forward three copies of the petition and its accompanying documents:

24 (a) to the responding tribunal or appropriate support enforcement agency in the responding state;

25 or

26 (b) if the identity of the responding tribunal is unknown, to the state information agency of the
27 responding state, with a request that they be forwarded to the appropriate tribunal and that receipt be
28 acknowledged.

29 (2) The department of public health and human services is the initiating tribunal for any action or
30 proceeding that may be brought under Title 40, chapter 5, parts 2, 4, and 5. In all other cases, the district

1 court is the initiating tribunal.

2 (3) If a responding state has not enacted the Uniform Interstate Family Support Act or another law
3 substantially similar to that act, a tribunal of this state may issue a certificate or other documents and make
4 findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the
5 tribunal may specify the amount of support sought and provide other documents necessary to satisfy the
6 requirements of the responding state."

7
8 **Section 32.** Section 40-5-162, MCA, is amended to read:

9 **"40-5-162. Duties and powers of responding tribunal.** (1) When a responding tribunal of this state
10 receives a petition or comparable pleading from an initiating tribunal or directly pursuant to 40-5-158(4),
11 it shall cause the petition or pleading to be filed and notify the petitioner ~~by first-class mail~~ where and when
12 it was filed.

13 (2) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or
14 more of the following:

15 (a) issue or enforce a support order, modify a child support order, or render a judgment to
16 determine parentage;

17 (b) order an obligor to comply with a support order, specifying the amount and the manner of
18 compliance;

19 (c) order income withholding;

20 (d) determine the amount of any arrearages and specify a method of payment;

21 (e) enforce orders by use of civil or criminal contempt, or both;

22 (f) set aside property for satisfaction of the support order;

23 (g) place liens and order execution on the obligor's property;

24 (h) order an obligor to keep the tribunal informed of the obligor's current residential address,
25 telephone number, employer, address of employment, and telephone number at the place of employment;

26 (i) issue a bench warrant for an obligor who has failed, after proper notice, to appear at a hearing
27 ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal
28 warrants;

29 (j) order the obligor to seek appropriate employment by specified methods;

30 (k) award reasonable attorney fees and other fees and costs; and

1 (l) grant any other available remedy.

2 (3) A responding tribunal of this state shall include in a support order issued under this part or in
3 the documents accompanying the order the calculations on which the support order is based.

4 (4) A responding tribunal of this state may not condition the payment of a support order issued
5 under this part upon a party's compliance with visitation provisions.

6 (5) If a responding tribunal of this state issues an order under this part, the tribunal shall send a
7 copy of the order ~~by first-class mail~~ to the petitioner and the respondent and to the initiating tribunal, if any.

8 (6) The department of public health and human services is the responding tribunal for receipt of
9 a petition or comparable proceedings from an initiating state as provided in 40-5-263. In all other cases,
10 the district court is the responding tribunal."
11

12 **Section 33.** Section 40-5-163, MCA, is amended to read:

13 **"40-5-163. Inappropriate tribunal.** If a petition or comparable pleading is received by an
14 inappropriate tribunal of this state, it shall forward the pleading and accompanying documents to an
15 appropriate tribunal in this state or another state and notify the petitioner ~~by first-class mail~~ where and
16 when the pleading was sent."
17

18 **Section 34.** Section 40-5-164, MCA, is amended to read:

19 **"40-5-164. Duties of support enforcement agency.** (1) A support enforcement agency of this
20 state, upon application, shall provide services to a petitioner in a proceeding under this part.

21 (2) A support enforcement agency that is providing services to the petitioner shall, as appropriate:

22 (a) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain
23 jurisdiction over the respondent;

24 (b) request an appropriate tribunal to set a date, time, and place for a hearing;

25 (c) make a reasonable effort to obtain all relevant information, including information as to income
26 and property of the parties;

27 (d) after receipt of a written notice from an initiating, responding, or registering tribunal, promptly
28 send a copy of the notice ~~by first-class mail~~ to the petitioner;

29 (e) after receipt of a written communication from the respondent or the respondent's attorney,
30 promptly send a copy of the communication ~~by first-class mail~~ to the petitioner; and

1 (f) notify the petitioner if jurisdiction over the respondent cannot be obtained.

2 (3) This part does not create or negate a relationship of attorney and client or other fiduciary
3 relationship between a support enforcement agency or the attorney for the agency and the individual being
4 assisted by the agency.

5 (4) For purposes of this part, the department of public health and human services is the support
6 enforcement agency for this state as provided in Title 40, chapter 5, parts 2, 4, and 5. All the provisions
7 of this part must be interpreted as supplemental to and cumulative with the department's powers and duties
8 under those provisions. In all other cases, the county attorney in the county in which an action must be
9 filed is the support enforcement agency."

10
11 **Section 35.** Section 40-5-173, MCA, is amended to read:

12 **"40-5-173. Costs and fees.** (1) The petitioner may not be required to pay a filing fee or other costs
13 to initiate a proceeding under this part.

14 (2) If an obligee prevails, a responding tribunal may assess against an obligor the filing fees,
15 reasonable attorney fees, other costs, and necessary travel and other reasonable expenses incurred by the
16 obligee and the obligee's witnesses. Except as provided by other law, the tribunal may not assess fees,
17 costs, or expenses against the obligee or the support enforcement agency of either the initiating or the
18 responding state. Attorney fees may be taxed as costs and may be ordered paid directly to the attorney,
19 who may enforce the order in the attorney's own name. Payment of current support owed to the obligee
20 has priority over fees, costs, and expenses.

21 (3) The tribunal shall order the payment of costs and reasonable attorney fees if it determines that
22 a hearing was requested primarily for delay. In a proceeding under ~~40-5-184 through 40-5-195 or 40-5-271~~
23 this part for enforcement or modification of a support order after registration, a hearing is presumed to have
24 been requested primarily for delay if a registered support order is confirmed or enforced without change.

25 (4) The standardized schedule of fees established by the department of public health and human
26 services under 40-5-210 is conclusive in any action under this section. Any fees or costs recoverable under
27 subsection (2) that are not included in the standardized schedules are recoverable under subsection (2)."
28

29 **Section 36.** Section 40-5-186, MCA, is amended to read:

30 **"40-5-186. Effect of registration enforcement.** (1) A support order or income-withholding order

1 issued in another state is registered when the order is filed in a registering tribunal of this state.

2 (2) A registered order issued in another state is enforceable in the same manner and is subject to
3 the same procedures as an order issued by a tribunal of this state.

4 (3) Except as otherwise provided in ~~40-5-184 through 40-5-195~~ this part, a tribunal of this state
5 shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction."
6

7 **Section 37.** Section 40-5-188, MCA, is amended to read:

8 **"40-5-188. Notice of registration of order.** (1) When a support order or income-withholding order
9 issued in another state is registered, the registering tribunal shall notify the nonregistering party. ~~Notice~~
10 ~~must be given by first class or certified mail or by any means of personal service authorized by the law of~~
11 ~~this state.~~ The notice must be accompanied by a copy of the registered order and the documents and
12 relevant information accompanying the order.

13 (2) The notice must inform the nonregistering party:

14 (a) that a registered order is enforceable as of the date of registration in the same manner as an
15 order issued by a tribunal of this state;

16 (b) that a hearing to contest the validity or enforcement of the registered order must be requested
17 within 20 days after ~~the date of mailing or personal service of the~~ notice;

18 (c) that failure to contest the validity or enforcement of the registered order in a timely manner:

19 (i) will result in confirmation of the order and enforcement of the order and the alleged arrearages;

20 and

21 (ii) precludes further contest of that order with respect to any matter that could have been asserted;

22 and

23 (d) of the amount of any alleged arrearages.

24 (3) Upon registration of an income-withholding order for enforcement, the registering tribunal shall
25 notify the obligor's employer pursuant to ~~Title 40, chapter 5, part 4~~ the income-withholding laws of this
26 state."
27

28 **Section 38.** Section 40-5-189, MCA, is amended to read:

29 **"40-5-189. Procedure to contest validity or enforcement of registered order.** (1) A nonregistering
30 party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing

1 within 20 days after the date of mailing or personal service of notice of the registration. The nonregistering
2 party may, pursuant to 40-5-190, seek to vacate the registration, to assert any defense to an allegation
3 of noncompliance with the registered order, or to contest the remedies being sought or the amount of any
4 alleged arrearages.

5 (2) If the nonregistering party fails to contest the validity or enforcement of the registered order
6 in a timely manner, the order is confirmed by operation of law.

7 (3) If a nonregistering party requests a hearing to contest the validity or enforcement of the
8 registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties
9 ~~by first class mail~~ of the date, time, and place of the hearing."

10
11 **Section 39.** Section 40-5-194, MCA, is amended to read:

12 **"40-5-194. Modification of child support order of another state.** (1) After a child support order
13 issued in another state has been registered in this state, the ~~appropriate~~ responding tribunal of this state
14 may modify that order only if [section 10] does not apply, and, after notice and hearing, it finds that:

15 (a) the following requirements are met:

16 (i) the child, the individual obligee, and the obligor do not reside in the issuing state;

17 (ii) a petitioner who is a nonresident of this state seeks modification; and

18 (iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

19 (b) ~~an individual party or the child or a party who is an individual~~ is subject to the personal
20 jurisdiction of the tribunal of this state and all of the ~~individual~~ parties who are individuals have filed in the
21 ~~issuing tribunal a written consent providing that the appropriate consents in the issuing tribunal for a~~
22 ~~tribunal of this state may to~~ modify the support order and ~~that this state may~~ assume continuing, exclusive
23 jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law
24 or established procedures substantially similar to the procedures under this part, the consent otherwise
25 required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify
26 the child support order.

27 (2) Modification of a registered child support order is subject to the same requirements, procedures,
28 and defenses that apply to the modification of an order issued by a tribunal of this state, and the order may
29 be enforced and satisfied in the same manner.

30 (3) A tribunal of this state may not modify ~~only~~ any aspect of a child support order that may not

1 ~~be modified under the laws of the issuing state. A tribunal may not modify provisions, such as custody,~~
2 ~~visitation, or other provisions not related to support~~ If two or more tribunals have issued child support
3 orders for the same obligor and child, the order that controls and must be recognized under 40-5-151
4 establishes the aspects of the support order that are nonmodifiable.

5 (4) On issuance of an order modifying a child support order issued in another state, a tribunal of
6 this state has continuing, exclusive jurisdiction.

7 (5) Within 30 days after issuance of a modified child support order, the ~~tribunal-issuing party~~
8 obtaining the modification shall file a certified copy of the order:

9 (a) with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order; and

10 (b) in each tribunal in which the ~~modifying tribunal~~ party knows that ~~the~~ the earlier order has been
11 registered.

12 (6) A party who obtains the order and fails to file a certified copy is subject to appropriate
13 sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the
14 validity or enforceability of the modified order of the new tribunal of continuing, exclusive jurisdiction."
15

16 **Section 40.** Section 40-5-195, MCA, is amended to read:

17 **"40-5-195. Recognition of order modified in another state.** A tribunal of this state shall recognize
18 a modification of its earlier child support order by a tribunal of another state that assumed jurisdiction
19 pursuant to this part or a law substantially similar to this part. Except as otherwise provided in this part,
20 the tribunal of this state shall, upon request:

21 (1) enforce the order that was modified only as to amounts accruing before the modification;

22 (2) enforce only nonmodifiable aspects of that order;

23 (3) provide other appropriate relief only for violations of the order that occurred before the effective
24 date of the modification; and

25 (4) recognize the modifying order of the other state, upon registration, for the purpose of
26 enforcement."
27

28 **Section 41.** Section 40-5-196, MCA, is amended to read:

29 **"40-5-196. Proceeding to determine parentage.** (1) A tribunal of this state may serve as an
30 initiating or responding tribunal in a proceeding brought under this part or a law or procedure substantially

1 similar to this part, the Uniform Reciprocal Enforcement of Support Act, ~~or~~ the Revised Uniform Reciprocal
 2 Enforcement of Support Act, or a law or procedure substantially similar to either of those acts to determine
 3 whether the petitioner is a parent of a particular child or to determine whether a respondent is a parent of
 4 that child.

5 (2) In a proceeding to determine parentage, a responding tribunal of this state shall apply the rules
 6 of this state on choice of law.

7 (3) A proceeding to determine parentage directed to:

8 (a) the department of public health and human services from an initiating state pursuant to
 9 40-5-263 and this part is subject to the provisions of 40-5-231 through 40-5-237 or Title 40, chapter 6,
 10 part 1, as applicable; and

11 (b) a district court from an initiating state is subject to the provisions of Title 40, chapter 6, part
 12 1."

13
 14 **Section 42.** Section 40-5-201, MCA, is amended to read:

15 **"40-5-201. Definitions.** As used in this part, the following definitions apply:

16 (1) "Alleged father" means a person who is alleged to have engaged in sexual intercourse with a
 17 child's mother during a possible time of conception of the child or a person who is presumed to be a child's
 18 father under the provisions of 40-6-105.

19 (2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated,
 20 self-supporting, married, or a member of the armed forces of the United States; any person under 19 years
 21 of age and still in high school; or any person who is mentally or physically incapacitated if the incapacity
 22 began prior to the person's 18th birthday and for whom:

23 (i) support rights are assigned under 53-2-613;

24 (ii) a public assistance payment has been made;

25 (iii) the department is providing support enforcement services under 40-5-203; or

26 (iv) the department has received a referral for interstate services from an agency of another state
 27 under the provisions of the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal
 28 Enforcement of Support Act, the Uniform Interstate Family Support Act, or ~~under~~ Title IV-D of the Social
 29 Security Act.

30 (b) The term may not be construed to limit the ability of the department to enforce a support order

1 according to its terms when the order provides for support to extend beyond the child's 18th birthday.

2 (3) "Department" means the department of public health and human services.

3 (4) "Director" means the director of the department of public health and human services or the
4 director's authorized representative.

5 (5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

6 (6) "Hearings officer" or "hearing examiner" means the hearings officer appointed by the
7 department for the purposes of this chapter.

8 (7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support
9 of a child or children.

10 (8) "Obligee" means:

11 (a) a person to whom a duty of support is owed and who is receiving support enforcement services
12 under this part; or

13 (b) a public agency of this or another state having the right to receive current or accrued support
14 payments.

15 (9) "Obligor" means a person, including an alleged father, who owes a duty of support.

16 (10) "Parent" means the natural or adoptive parent of a child.

17 (11) "Paternity blood test" means a test that demonstrates through examination of genetic markers
18 either that an alleged father is not the natural father of a child or that there is a probability that an alleged
19 father is the natural father of a child. The genetic markers may be identified from a person's blood or tissue
20 sample. The blood or tissue sample may be taken by blood drawing, buccal swab, or any other method
21 approved by the American association of blood banks. Paternity blood tests may include but are not limited
22 to the human leukocyte antigen test and DNA probe technology.

23 (12) "Public assistance" means any type of monetary or other assistance for a child, including
24 medical and foster care benefits. The term includes payments to meet the needs of a relative with whom
25 the child is living, if assistance has been furnished with respect to the child by a state or county agency
26 of this state or any other state.

27 (13) "Support debt" or "support obligation" means the amount created by:

28 (a) the failure to provide for the medical, health, and support needs of a child under the laws of
29 this or any other state or under a support order; or

30 (b) a support order for spousal maintenance ~~if the judgment or order requiring payment of~~

1 maintenance also contains a judgment or order requiring payment of child support for a child of whom the
2 person awarded maintenance is of the custodial parent.

3 (14) "Support order" means an order, whether temporary or final, that:

4 (a) provides for the payment of a specific amount of money, expressed in periodic increments or
5 as a lump-sum amount, for the support of the child, including an amount expressed in dollars for medical
6 and health needs, child care, education, recreation, clothing, transportation, and other related expenses and
7 costs specific to the needs of the child; and

8 (b) is issued by:

9 (i) a district court of this state;

10 (ii) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

11 (iii) an administrative agency pursuant to proceedings under this part; or

12 (iv) an administrative agency of another state, Indian tribe, or foreign country with a hearing
13 function and process similar to those of the department under this part.

14 (15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations
15 promulgated under the act."
16

17 **Section 43.** Section 40-5-203, MCA, is amended to read:

18 **"40-5-203. Child support enforcement services.** (1) The department may accept applications for
19 child support enforcement services on behalf of persons who are not recipients of public assistance and
20 may take appropriate action to establish or enforce support obligations against persons owing a duty to pay
21 support.

22 (2) The department may establish by rule the terms and conditions by which services are provided
23 under this section.

24 (3) If child support enforcement services are provided under this part to or for a child as a result
25 of the payment of public assistance, the department ~~may~~ shall continue to provide services after public
26 assistance is no longer being paid, subject to the same conditions and on the same basis as in the case of
27 other individuals to whom services are furnished under this section, without requiring an application,
28 application fee, or other request for services. ~~An obligee's acceptance~~ Acceptance of continued services
29 constitutes the obligee's agreement to the terms and conditions set for applicants by the department under
30 this section.

1 (4) Services under this section, including information requests, are available to obligors, obligees,
2 and residents of other states on the same terms as residents of this state.

3 ~~(4)~~(5) The department may terminate services under this section if it:

4 (a) receives a written request ~~from the obligee~~ for termination of services from the person to whom
5 services are being provided;

6 (b) receives notice that the child is receiving public assistance; or

7 (c) determines that ~~an obligee~~ the person receiving services has violated any term or condition set
8 by the department for an applicant under this section."

9
10 **Section 44.** Section 40-5-206, MCA, is amended to read:

11 **"40-5-206. Central unit for information and administration -- cooperation enjoined -- availability**
12 **of records.** (1) The department shall establish a central unit to serve as a registry for the receipt of
13 information, for answering interstate inquiries concerning deserting parents, for receiving and answering
14 requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise
15 departmental activities in relation to deserting parents, and to ensure effective cooperation with law
16 enforcement agencies.

17 ~~(2) If services are provided to a child under this part, the~~ The department or other IV-D agency may
18 request and, notwithstanding any statute making the information confidential, all state, county, and city
19 agencies, officers, and employees shall provide on request information, if known, concerning an obligor or
20 obligee, including:

21 (a) name;

22 (b) residential and mailing addresses;

23 (c) date of birth;

24 (d) social security number;

25 (e) wages or other income;

26 (f) number of dependents claimed for state and federal income tax withholding purposes;

27 (g) name and address of employer;

28 (h) state and local tax and revenue records;

29 (i) penal corrections records;

30 ~~(h)(i)~~ address, location, and description of any real property or titled personal property; and

1 ~~(k)~~ any other asset in which the obligor or obligee may have an interest, including its location and
2 the extent, nature, and value of the interest.

3 (3) Upon service of an administrative subpoena from the department or another IV-D agency, public
4 utilities, cable television companies, financial institutions, and all other entities maintaining customer data
5 bases shall, with regard to an obligor or obligee, provide the department or the requesting IV-D agency with
6 the name and address of the obligor or obligee, the name and address of the obligor's or obligee's
7 employer, and any information on the obligor's or obligee's assets and liabilities contained in customer
8 records.

9 ~~(3)(4)~~ Any information obtained by the department during the course of a child support
10 investigation that is confidential at the source must be treated by the department as confidential and must
11 be safeguarded accordingly. ~~The~~ Absent a specific statutory prohibition to the contrary and subject to
12 subsection (6), the department may release information obtained from nonconfidential public and private
13 sources, including information regarding support orders, judgments, and payment records.

14 ~~(4)(5)~~ Use Absent a specific statutory prohibition or rule to the contrary and subject to subsection
15 (6), use or disclosure of information obtained by the department from confidential sources ~~of and or any~~
16 information maintained by the department in its records, including the names, addresses, and social security
17 numbers of obligors and obligees, is limited to:

18 (a) purposes directly related to the provision of services under this chapter;

19 (b) county attorneys and courts having jurisdiction in support and abandonment proceedings and
20 agencies in other states engaged in the enforcement of support of minor children under the federal Social
21 Security Act; and

22 (c) any other use permitted or required by the federal Social Security Act.

23 (6) The department may not disclose information regarding the whereabouts of a party to another
24 party if:

25 (a) the department received notice that a protective order with respect to the party has been entered
26 against the other party; or

27 (b) the department has reason to believe that the release of information may result in physical or
28 emotional harm to the party.

29 (7) A person[, public entity,] or private entity that discloses information to the department in
30 compliance with this section is not liable to the obligor or obligee for negligent disclosure.

1 (8) An entity failing to comply with this section is subject to the contempt authority of the
2 department under 40-5-226."

3
4 **Section 45.** Section 40-5-210, MCA, is amended to read:

5 **"40-5-210. Standardized fee schedule -- rules.** (1) The department may charge an application fee
6 to each person applying for services under 40-5-203, except that the fee may not be charged to persons
7 who receive continuing services under 40-5-203(3). The application fee may be:

8 (a) a flat dollar amount; or

9 (b) an amount based on a sliding fee schedule that is based on the applicant's income level.

10 (2) If paternity is established or presumed under 40-5-234 for the alleged father, the fees for
11 paternity blood testing may be recovered from the parent, whether the alleged father or the mother,
12 denying paternity of the alleged father. The total amount of the paternity blood testing fee may not exceed
13 the actual costs of the paternity blood tests. A bill for a paternity blood test is admissible in evidence
14 without third-party foundation testimony.

15 (3) The department may charge a handling fee for each payment of support collected on behalf of
16 any obligee who is not a recipient of public assistance. The department may withhold the fee from the
17 support payment before distribution to the obligee.

18 (4) The department may charge an obligor a late payment fee for each late payment of support
19 collected on behalf of any obligee.

20 (5) The department may establish a fee schedule in order to recover costs and expenses in excess
21 of the application, handling, and late fees. The fees must be commensurate with costs or an average of the
22 expenditures related to specific or routine activities.

23 (a) The department shall develop procedures for determining whether it is appropriate for either the
24 obligor or the obligee to be responsible for payment of the fee. In developing the procedures, the
25 department shall consider federal regulations promulgated under Title IV-D of the Social Security Act.

26 (b) In an action to establish paternity or to establish or enforce a child support obligation, whether
27 in district court or by administrative process, the department must be awarded costs in the amount
28 established in the fee schedule as part of any judgment, decree, or order whenever the department:

29 (i) is a prevailing party in the action; or

30 (ii) is not a party but incurs expenses and costs related to the action.

1 (6) The department may collect the fees awarded under this section by one of the following means:

2 (a) if the fee is owed by an obligor, the fee may be:

3 (i) collected through any remedy available to the department for the collection of child support
4 arrearages; or

5 (ii) deducted from any payments made by the obligor before the payment is distributed to the
6 obligee. Credit for the payment must be reduced by the amount of the deduction for the fee. The deduction
7 for fees may not reduce any current support due to the obligee. The deduction for a late payment fee may
8 not reduce any current or past-due support due to the obligee.

9 (b) if the fee is owed by the obligee, the fee may be collected separately through any remedy
10 available to the department for the collection of child support or the department may withhold the fee
11 amount out of any payment collected on behalf of the obligee. The obligor must receive full credit for the
12 payment as if the withholding of fees did not occur.

13 (7) The department, upon a showing of necessity, may waive or defer any fee assessed under this
14 section.

15 (8) The department may adopt rules necessary to implement fee schedules under this section.

16 (9) The fees and costs charged and collected under this section must be paid monthly into the state
17 treasury to the credit of the child support enforcement division special revenue fund and must be
18 accompanied by a detailed statement of the amounts collected."
19

20 **Section 46.** Section 40-5-225, MCA, is amended to read:

21 "**40-5-225. Notice of financial responsibility -- temporary and final support obligations --**
22 **administrative procedure.** ~~(1) (a) In the absence of a support order, the department may serve an obligor~~
23 ~~with a notice of financial responsibility alleging a child's need for support and the amount of the need and~~
24 ~~requiring the obligor to appear and show cause at a hearing held by the department why the obligor should~~
25 ~~not be finally ordered to pay the amount alleged in the notice.~~

26 ~~(b) The notice must state:~~

27 ~~(i) the names of the obligee and child;~~

28 ~~(ii) the amount of current and future support to be paid each month for the child;~~

29 ~~(iii) that if the obligor does not file a written answer within 20 days from the date of service or~~
30 ~~refusal of service, the amount in the notice must be finally ordered;~~

1 ~~(iv) that the obligor is entitled to a fair hearing under 40-5-226.~~

2 ~~(2) If, prior to the service of the notice under this section, the department has information~~
3 ~~concerning the obligor's financial condition, the department's allegation of the obligor's monthly support~~
4 ~~responsibility must be based on the scale of suggested minimum contributions under 40-5-214. If such~~
5 ~~information is unknown to the department, the allegations of the obligor's monthly support responsibility~~
6 ~~must be based on the greater of:~~

7 ~~(a) the amount of public assistance payable under Title 53, chapter 4; or~~

8 ~~(b) the alleged need.~~

9 ~~(3) If the obligor objects to the notice, the obligor shall file a written answer with the department~~
10 ~~within 20 days from the date of service or refusal of service. If the department receives a timely answer,~~
11 ~~it shall conduct a fair hearing under 40-5-226. If the department does not receive a timely answer, it shall~~
12 ~~order the obligor to pay the amount stated in the notice.~~

13 (1) In the absence of an existing support order, when the requirements of this section are met, the
14 department may enter an order requiring a child's parent or parents to pay an amount each month for the
15 support of the child. The support order must include a medical support order as required by 40-5-208.

16 (2) An action to establish a support order must be commenced by serving a notice of financial
17 responsibility on the parent or parents. The notice must include a statement:

18 (a) of the names of the child, the obligee, and if different than the obligee, the child's guardian or
19 caretaker relative;

20 (b) of the dollar amount of the support obligation to be paid each month for the child;

21 (c) that in addition to child support, the parent or parents may be ordered to provide for the child's
22 medical support needs;

23 (d) that any party may request a hearing to contest the amount of child support shown in the
24 notice or to contest the establishment of a medical support order;

25 (e) that if a party does not timely file a request for hearing, support, including medical support, will
26 be ordered as declared in the notice or in accordance with the child support guidelines adopted under
27 40-5-209;

28 (f) that if a party does request a hearing, the other parties may refuse to participate in the
29 proceedings, however, the child support and medical support order will be determined using the information
30 available to the department or provided at the hearing;

1 (g) that a party's refusal to participate is a consent to entry of a child support and medical support
2 order consistent with the department's determination; and

3 (h) that the parties are entitled to a fair hearing under 40-5-226.

4 ~~(4) (a)(3)~~ If a support action is pending in district court and a temporary or permanent support
5 obligation has not been ordered or if a paternity action is pending and there is clear and convincing evidence
6 of paternity based on paternity blood tests or other evidence, the department may ~~issue to the obligor a~~
7 ~~notice of temporary support obligation~~ enter an order requiring a child's parent or parents to pay an amount
8 each month for the temporary support of the child pending entry of a support order by the district court.
9 The temporary support order must include a medical support order as required by 40-5-208.

10 ~~(b) The notice must contain:~~

11 ~~(i) the names of the child and the person or agency having the custodial care of the child;~~

12 ~~(ii) an amount for temporary monthly support determined as provided in subsection (2);~~

13 ~~(iii) a statement that the obligor may request a hearing at which the obligor may show that a~~
14 ~~different support amount is appropriate or that establishment of a support obligation is inappropriate under~~
15 ~~the circumstances. The hearing must be conducted in accordance with the procedures of 40-5-226.~~

16 ~~(iv) a statement that a hearing must be requested in writing within 10 days of receipt of the notice~~
17 ~~or the order for a temporary support order will be entered in the amount stated in the notice; and~~

18 ~~(v) a statement that the temporary support order will terminate upon the entry of a district court~~
19 ~~support order. If the district court order is retroactive, any amount paid for a particular period under the~~
20 ~~temporary support order must be credited against the amounts due under the district court order for the~~
21 ~~same period, but excess amounts may not be refunded. If the district court determines that a periodic~~
22 ~~support obligation is not proper, any amount paid under the temporary support order must be refunded to~~
23 ~~the obligor.~~

24 (4) An action to establish a temporary support order must be commenced by serving a notice of
25 temporary support obligation on the parent or parents. In addition to the statements required in subsection
26 (2), the notice must include a statement that:

27 (a) a party may request a hearing to show that a temporary support obligation is inappropriate under
28 the circumstances; and

29 (b) the temporary support order will terminate upon the entry of a final support order or an order
30 of nonpaternity. If the final order is retroactive, any amount paid for a particular period under the temporary

1 support order must be credited against the amounts due under the final order for the same period, but
2 excess amounts may not be refunded. If an order of nonpaternity is issued or if the final support order
3 states that periodic support obligation is not proper, the obligor may seek a refund from the obligee for any
4 amounts paid under the temporary support order.

5 (5) (a) If a temporary support order is entered or if proceedings are commenced under this section
6 for a married obligor, the department shall vacate any support order or dismiss any proceeding under this
7 part if it finds that the parties to the marriage have:

8 (i) reconciled without the marriage having been dissolved;

9 (ii) made joint application to the department to vacate the order or dismiss the proceeding; and

10 (iii) provided proof that the marriage has been resumed.

11 (b) The department may not vacate a support order or dismiss a proceeding under this subsection
12 (5) if it determines that the rights of a third person or the child are affected. The department may issue a
13 new notice of temporary support obligation under this section if the parties subsequently separate.

14 (6) ~~Any~~ A notice of financial responsibility and the notice of temporary support obligation ~~must~~ may
15 be served by certified mail or in the same manner prescribed for the service of a summons in civil action
16 in accordance with the Montana Rules of Civil Procedure.

17 (7) If prior to service of a notice under this section, the department has sufficient financial
18 information, the department's allegation of the obligor's monthly support responsibility, whether temporary
19 or final, must be based on the child support guidelines established under 40-5-214. If the information is
20 unknown to the department, the allegations of the parent's or parents' monthly support responsibility must
21 be based on the greater of:

22 (a) the maximum amount of public assistance that could be payable to the child under Title 53 if
23 the child were otherwise eligible for assistance; or

24 (b) the child's actual need as alleged by the custodial parent, guardian, or caretaker of the child.

25 (8) (a) A party who objects to a notice of financial responsibility or notice of temporary support
26 obligation may file a written request for hearing with the department:

27 (i) within 20 days from the date of service of a notice of financial responsibility; and

28 (ii) within 10 days from the date of service of a notice of temporary support obligation.

29 (b) If the department receives a timely request for a hearing, it shall conduct one under 40-5-226.

30 (c) If the department does not receive a timely request for a hearing, it shall order the parent or

1 parents to pay child support and to provide for the child's medical needs as stated in the notice. The child
2 support obligation must be the amount stated in the notice or determined in accordance with the child
3 support guidelines adopted under 40-5-209.

4 (9) A child support and medical support order under subsection (1) continues until the child attains
5 18 years of age or the child's graduation from high school, whichever occurs later, but not later than the
6 child's 19th birthday, unless the child is sooner emancipated by court order. A temporary support obligation
7 established under subsection (3) continues until terminated as provided in subsection (5) or until the
8 temporary order is superseded by a final order, judgment, or decree."

9
10 **Section 47.** Section 40-5-226, MCA, is amended to read:

11 **"40-5-226. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear**
12 **-- entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

13 (2) If a hearing is requested, it must ~~be scheduled within 20 days~~ initially be by teleconference
14 methods and is subject to the Montana Administrative Procedure Act. At the request of a party and upon
15 a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the
16 hearings officer shall grant a de novo in-person hearing.

17 (3) The hearings officer shall determine the liability and responsibility, if any, of the ~~obligor parent~~
18 or parents under the notice and shall enter a final decision and order in accordance with the determination.
19 The order may award support from the date of:

20 (a) the child's birth if paternity was established under 40-5-231 through 40-5-238 or under Title
21 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

22 (b) the parties' separation if support is initially established under 40-5-225; or

23 (c) notice to the parties of a support modification request under 40-5-273.

24 (4) (a) If Except as provided in subsection (4)(b), if the obligor fails parent or parents fail to appear
25 at the hearing or fails to timely file a request for a hearing, the hearings officer, upon a showing of valid
26 service, shall enter a default decision and order declaring the amount stated in the notice to be final.

27 (b) In a multiple party proceeding under 40-5-225, if one party files a timely request for hearing,
28 the matter must be set for hearing. Notice of the hearing must be served on the parties. If a party refuses
29 to appear for the hearing or participate in the proceedings, the hearing officer shall determine child support
30 and medical support orders based on the notice, information available to the department, and evidence

1 provided at the hearing by the appearing parties. A party's refusal to appear is a consent to entry of child
2 and medical support orders consistent with the hearing officer's determination.

3 (5) In a hearing to determine financial responsibility, whether temporary or final, and in any
4 proceeding to modify support under 40-5-273, the monthly support responsibility must be determined in
5 accordance with the evidence presented and with reference to the uniform child support guidelines adopted
6 by the department under 40-5-209. The hearings officer is not limited to the amounts stated in the notice.
7 The guidelines must be used in all cases, including cases in which the order is entered upon the default of
8 a party and those in which the order is entered upon the parties' consent. A verified representation of a
9 defaulting parent's income, based on the best information available, may be used when a parent fails to
10 provide financial information for use in applying the guidelines. The amount determined under the guidelines
11 is presumed to be an adequate and reasonable support award, unless the hearings officer finds by clear and
12 convincing evidence that the application of the guidelines is unjust to the child or to any of the parties or
13 is inappropriate in a particular case. If the hearings officer finds that the guideline amount is unjust or
14 inappropriate in a particular case, the hearings officer shall state the reasons for finding that the application
15 of the guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar findings
16 must also be made in a case in which the parties have agreed to a support amount that varies from the
17 guideline amount. The hearings officer may vary the application of the guidelines to limit the obligor's
18 liability for past support to the proportion of expenses already incurred that the hearings officer considers
19 just. Findings that rebut and vary the guideline amount must include a statement of the amount of support
20 that would have ordinarily been ordered under the guidelines.

21 (6) In a hearing to enforce a support order or to establish paternity under this chapter, the
22 department shall send a copy of the notice of hearing to the obligee by regular mail addressed to the
23 obligee's last-known address. The obligee may attend and observe the hearing as a nonparty. This
24 subsection does not limit participation of an obligee who is a party to the proceedings or who is called as
25 a witness to testify.

26 ~~(6)(7) (a) Within 20 days of the hearing, the~~ The hearings officer shall enter a final decision and
27 order. The determination of the hearings officer constitutes a final agency decision, subject to judicial
28 review under 40-5-253 and the provisions of the Montana Administrative Procedure Act. A copy of the
29 final decision must be delivered or mailed to each party, each party's attorney, and the obligee if the obligee
30 is not a party.

1 (b) A child support obligation established under this section is subject to the registration and
2 processing provisions of [sections 1 through 11].

3 ~~(7)~~(8) A support order entered under this part must contain a statement that the order is subject
4 to review and modification by the department upon the request of the department or a party under
5 40-5-271 through 40-5-273 when the department is providing services under IV-D for the enforcement of
6 the order.

7 ~~(8)~~(9) A support debt determined pursuant to this section is subject to collection action without
8 further necessity of action by the hearings officer.

9 ~~(9)~~(10) A child support debt or a support responsibility obligation determined under this part by
10 reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing
11 may be vacated, upon the motion of an obligor, by the hearings officer within the time provided and upon
12 a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

13 ~~(10)~~(11) (a) Unless the hearings officer makes a written exception under 40-5-315 or 40-5-411
14 and the exception is included in the support order, each order establishing a child support obligation,
15 whether temporary or final, and each modification of an existing child support order under this part is
16 enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4.
17 A support order that omits that provision or that provides for a payment arrangement inconsistent with this
18 section is nevertheless subject to withholding for the payment of support without need for an amendment
19 of the support order or for any further action by the hearings officer.

20 (b) If an obligor is excepted from paying support through income withholding, the support order
21 must include a requirement that whenever a party to the case is receiving IV-D services, support payments
22 must be paid through the department as provided in [section 5].

23 ~~(11)~~(12) (a) ~~For the purposes of income withholding provided for in subsection (10), whenever if~~
24 the department establishes paternity or establishes or modifies a child support obligation, the department's
25 order must include a provision requiring ~~the obligor, for as long as the department is providing support~~
26 ~~enforcement services, to keep the department informed of the name and address of the obligor's current~~
27 ~~employer, whether the obligor has access to health insurance through an employer or other group, and, if~~
28 ~~so, the health insurance policy information. each party other than the department to promptly file with the~~
29 department and to update, as necessary, information on:

30 (i) identity of the party;

1 (ii) social security number;

2 (iii) residential and mailing addresses;

3 (iv) telephone number;

4 (v) driver's license number;

5 (vi) name, address, and telephone number of employer; and

6 (vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier
7 or health benefit plan, the policy identification number, the name of the persons covered, and any other
8 pertinent information regarding coverage or, if the child is not covered, information as to the availability of
9 coverage for the child through the obligor's and obligee's employer.

10 (b) The order must further direct that in a subsequent child support enforcement action, upon
11 sufficient showing that diligent effort has been made to ascertain the location of the party, the department's
12 due process requirements for notice and service of process are met with respect to the party upon delivery
13 of written notice by regular mail to the most recent address of the party or the party's employer's address
14 reported to the department.

15 ~~(12)~~(13) The hearings officer may:

16 (a) compel obedience to the hearings officer's orders, judgments, and process and to ~~any~~
17 subpoenas and orders issued by the department, including income-withholding orders issued pursuant to
18 40-5-415;

19 (b) compel the attendance of witnesses at administrative hearings;

20 (c) compel obedience of subpoenas for paternity blood tests;

21 (d) compel the production of accounts, books, documents, and other evidence; ~~and~~

22 (e) punish for civil contempt. Contempt authority does not prevent the department from proceeding
23 in accordance with the provisions of 2-4-104.

24 (f) compel the production of information requested by the department or IV-D agency of another
25 state under 40-5-443.

26 ~~(13)~~(14) A contempt occurs whenever:

27 (a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer
28 or of the department;

29 (b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear
30 for genetic paternity tests fails to do so;

1 (c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing
2 fails to do so;

3 (d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply
4 with discovery requests; or

5 (e) a person or entity compelled by administrative subpoena from the department or another IV-D
6 agency to produce financial information or other information needed to establish paternity or to establish,
7 modify, or enforce a support order fails to do so;

8 ~~(e)~~(f) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the
9 provisions of the order. In the case of a payor under an income-withholding order, a separate contempt
10 occurs each time that income is required to be withheld and paid to the department and the payor fails to
11 take the required action.

12 (g) a payor or labor union fails to provide information to the department or another IV-D agency
13 when requested under 40-5-443; or

14 (h) a financial institution uses information provided by the department pursuant to [section 11] for
15 any other purpose without the authorization of the department.

16 ~~(14)~~(15) An affidavit of the facts constituting a contempt must be submitted to the hearings officer,
17 who shall review it to determine whether there is cause to believe that a contempt has been committed.
18 If cause is found, the hearings officer shall issue a citation requiring the alleged contemnor to appear and
19 show cause why the alleged contemnor should not be determined to be in contempt and required to pay
20 a penalty of not more than \$500 for each count of contempt. The citation, along with a copy of the
21 affidavit, must be served upon the alleged contemnor either by personal service or by certified mail. All
22 other interested persons may be served a copy of the citation by first-class mail.

23 ~~(15)~~(16) At the time and date set for hearing, the hearings officer shall proceed to hear witnesses
24 and take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged
25 contemnor fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence.
26 If the hearings officer finds the alleged contemnor in contempt, the hearings officer may impose a penalty
27 of not more than \$500 for each count found. The hearings officer's decision constitutes a final agency
28 decision, subject to judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

29 ~~(16)~~(17) An amount imposed as a penalty may be collected by any remedy available to the
30 department for the enforcement of child support obligations, including warrant for distraint pursuant to

1 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to
2 Title 17, chapter 4, part 1. The department may retain any penalties collected under this section to offset
3 the costs of administrative hearings conducted under this chapter.

4 ~~(17)~~(18) The penalties charged and collected under this section must be paid into the state treasury
5 to the credit of the child support enforcement division special revenue fund and must be accompanied by
6 a detailed statement of the amounts collected."

7
8 **Section 48.** Section 40-5-227, MCA, is amended to read:

9 **"40-5-227. Filing and docketing of final orders -- orders effective as district court decrees.** (1) An
10 abstract of any final administrative order under this chapter may be filed in the office of the clerk of the
11 district court of any county of Montana. ~~The~~ Upon the request of the department, the order, if approved,
12 must be docketed in the judgment docket of the district court. The properly filed and docketed order has
13 all the force, effect, and attributes of a docketed order or decree of the district court, including but not
14 limited to lien effect and enforceability by supplemental proceedings, writs of execution, and contempt of
15 court proceedings. A final administrative order of the department is effective and enforceable to the same
16 degree as a district court order, without filing and docketing the order in the district court.

17 (2) A final administrative order that determines and sets periodic support payments in the absence
18 of a district court order, when filed and docketed under this section, may be modified by a district court
19 order only as to installments accruing after actual notice to the parties of any motion for modification. The
20 standard for a modification is that set forth in 40-4-208.

21 (3) The department may issue a warrant for distraint based upon a properly filed and docketed
22 order pursuant to 40-5-247."

23
24 **Section 49.** Section 40-5-232, MCA, is amended to read:

25 **"40-5-232. Establishment of paternity -- notice of ~~paternity determination~~ parental responsibility**
26 **-- contents.** (1) When the paternity of a child has not been legally established under the provisions of Title
27 40, chapter 6, part 1, or otherwise, the department may proceed to establish paternity under the provisions
28 of 40-5-231 through 40-5-237. An administrative hearing held under the provisions of 40-5-231 through
29 40-5-237 is a contested case within the meaning of 2-4-102 and is subject to the provisions of Title 2,
30 chapter 4, except as otherwise provided in 40-5-231 through 40-5-237.

(2) It is presumed to be in the best interest of a child to legally determine and establish paternity.

A presumption under this subsection may be rebutted by a preponderance of the evidence.

(3) In ~~any a~~ proceeding under 40-5-231 through 40-5-237, if ~~a person acknowledges paternity of a child in writing and the acknowledgment is filed with the department,~~ an alleged father consents in writing to entry of an order declaring the alleged father to be the legal father of a child, the department may enter an order establishing legal paternity. As a part of ~~a voluntary acknowledgment~~ a consent to entry of an order declaring paternity, the department shall provide information to the ~~parents~~ alleged father regarding the rights and responsibilities of ~~acknowledging an alleged father consenting to entry of an order declaring~~ paternity. ~~An acknowledgment~~ A consent to entry of an order declaring paternity is binding on a parent who executes it, whether or not the parent is a minor.

(4) Full faith and credit must be given to a determination of paternity made by any other state, whether presumed by law, established through voluntary acknowledgment, or established by administrative or judicial processes.

(5) The department shall commence proceedings to establish paternity by serving on an alleged father a notice of ~~paternity determination~~ parental responsibility. The department may not serve the notice unless it has:

(a) a sworn statement ~~from the child's mother~~ claiming that the alleged father is the child's natural father;

(b) evidence of the existence of a presumption of paternity under 40-6-105; or

(c) any other reasonable cause to believe that the alleged father is the child's natural father.

(6) Service on the alleged father of the notice of ~~paternity determination~~ parental responsibility must be made as provided in 40-5-231(2). The notice must include:

(a) an allegation that the alleged father is the natural father of the child involved;

(b) the child's name and place and date of birth;

(c) the name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;

(d) the probable time or period of time during which conception took place;

(e) a statement that if the alleged father fails to timely deny the allegation of paternity, the question of paternity may be resolved against the alleged father without further notice;

(f) a statement that if the alleged father timely denies the allegation of paternity:

(i) the alleged father is subject to compulsory paternity blood testing;
(ii) a paternity blood test may result in a presumption of paternity; and
(iii) upon receipt of the paternity blood test results, if the alleged father continues to deny paternity, the alleged father may request the department to refer the matter to district court for a determination of paternity.

(7) The alleged father may file a written denial of paternity with the department within 20 days after service of the notice of ~~paternity determination~~ parental responsibility.

(8) When there is more than one alleged father of a child, the department may serve a notice of ~~paternity determination~~ parental responsibility on each alleged father in the same consolidated proceeding or in separate proceedings. Failure to serve notice on an alleged father does not prevent the department from serving notice on any other alleged father of the same child."

Section 50. Section 40-5-233, MCA, is amended to read:

"40-5-233. Establishment of paternity -- administrative hearing -- subpoena -- compulsory blood testing. ~~(1) When the department receives a timely written denial of paternity, it may order the alleged father to appear for an administrative hearing. The hearing may be conducted by teleconferencing methods. If the testimony and other supplementary evidence demonstrate a reasonable probability that the alleged father had sexual intercourse with the child's mother during the probable time of the child's conception or if the evidence shows a probable existence of a presumption under 40-6-105, the department may issue a subpoena ordering the alleged father to submit to paternity blood testing. A reasonable probability of sexual intercourse during the possible time of conception may be established by affidavit of the child's mother.~~

(1) (a) Paternity blood testing may be requested by the alleged father, the mother, or the child through the child's custodian and may be made in conjunction with or in addition to a notice the department issues under 40-5-232. The request must be in writing and must be supported by a sworn statement of the requester that includes:

(i) an allegation of paternity and sufficient facts to establish a reasonable probability that the alleged father engaged in an act with the child's mother during the probable time of the child's conception that could have resulted in the child's conception; or

(ii) a denial of paternity and sufficient facts to establish a reasonable probability of the nonexistence

1 of contact between the alleged father and the child's mother that could have resulted in the child's
2 conception.

3 (b) If the department determines after a review of a sworn statement that there are sufficient facts
4 to establish a reasonable probability of paternity or nonpaternity as claimed by the requesting party, the
5 department shall issue a subpoena ordering the alleged father, the mother, or the child through the child's
6 custodian to submit to blood testing.

7 (c) A pending request for blood testing under this section does not prevent the department from
8 issuing a notice of parental responsibility under 40-5-232.

9 (d) Denial of a request for paternity blood testing under this subsection (1) is not a finding of
10 nonpaternity and does not prevent the issuance of a notice under 40-5-232. A denial does not affect the
11 completion of any pending action initiated under 40-5-232.

12 (2) (a) The department may order an alleged father to appear for an administrative hearing when:

13 (i) the department determines that the sworn statement provided in subsection (1) does not contain
14 sufficient facts to issue a blood test subpoena and that additional examination of witnesses or evidence is
15 necessary; or

16 (ii) the department receives a timely filed written denial of paternity in response to a notice under
17 40-5-232.

18 (b) The hearing must initially be conducted by teleconferencing methods and is subject to the
19 provisions of the Montana Administrative Procedure Act. At the request of a party and upon a showing
20 that the party's case was substantially prejudiced by the lack of an in-person hearing, the hearings officer
21 shall, at the close of a teleconference hearing, grant a de novo in-person hearing.

22 (c) The department may issue a subpoena ordering the alleged father to submit to paternity blood
23 testing if the testimony and other supplementary evidence demonstrate a reasonable probability:

24 (i) that the alleged father engaged in an act with the child's mother during the probable time of the
25 child's conception that could have resulted in the child's conception; or

26 (ii) when the alleged father's paternity is presumed under 40-6-105, of the nonexistence of contact
27 between the alleged father and the child's mother that could have resulted in the child's conception.

28 (d) For the purposes of this subsection (2), a reasonable probability of an act during the possible
29 time of conception may be established by affidavit of the child's mother without need for the mother to
30 appear at the hearing.

1 (3) Previous paternity actions under this part that did not result in a subpoena for paternity blood
2 testing do not prevent the department from recommending a paternity action if the department believes it
3 can establish any of the factors listed in subsection (2)(c) or (2)(d).

4 ~~(2)~~(4) When there is reasonable cause to suggest that a blood test sample of a person submitting
5 to a blood test was not the sample of the alleged father, mother, or child, an additional hearing may be
6 held. The scope of the hearing is limited to questions involving the blood drawing or the chain of custody
7 at the blood drawing site. The ~~hearing~~ hearings officer may order retesting of any party.

8 ~~(3)~~(5) If the department does not receive a timely filed written denial of paternity or if an alleged
9 father fails to appear at a scheduled hearing or for a scheduled paternity blood test, the department may
10 enter an order declaring the alleged father the legal father of the child. The order will take effect within 10
11 days after entry of the default unless the alleged father before the 10th day presents good cause for failure
12 to make a timely denial or for failure to appear at the hearing or to undergo paternity blood testing. The
13 department may not enter an order under this section if there is more than one alleged father unless the
14 default applies to only one of them and all others have been excluded by the results of paternity blood
15 testing. An order issued under the provisions of this section may be set aside as provided in 40-5-235(3).

16 ~~(4)~~(6) If the rights of others and the interests of justice so require, the department may apply to
17 any district court under the provisions of 2-4-104 for an order compelling an alleged father to submit to
18 paternity blood testing. The court shall hear the matter as expeditiously as possible. If the court finds
19 reasonable cause to believe that the alleged father is the natural or presumed father of the child, the court
20 shall enter an order compelling the alleged father to submit to a paternity blood test. ~~As provided in~~
21 ~~subsection (4), reasonable~~ Reasonable cause may be established by affidavit of the child's mother."

22
23 **Section 51.** Section 40-5-235, MCA, is amended to read:

24 **"40-5-235. Effect of order establishing paternity -- birth records -- relief from order.** (1) An
25 administrative order of the department declaring the paternity of a child, docketed as provided in 40-5-227,
26 establishes the legal existence of the parent and child relationship for all purposes and confers or imposes
27 all parental rights, privileges, duties, and obligations.

28 (2) Upon the request of the mother or father of ~~the~~ a child born in this state, the department shall
29 prepare a substitute certificate of birth, if necessary, consistent with the administrative order. The
30 substitute certificate of birth is subject to the provisions of 40-6-123, with references to "court" taken to

mean "department".

(3) Except for an order based on a ~~voluntary acknowledgment of~~ consent to entry of an order declaring paternity, the department may set aside an administrative order establishing the paternity of a child upon the application of any affected party and upon a showing of any of the grounds and within the timeframes provided in Rule 60(b) of the Montana Rules of Civil Procedure.

(4) An order of the department under 40-5-232 through 40-5-235 may be reviewed under the provisions of Title 2, chapter 4, part 7."

Section 52. Section 40-5-236, MCA, is amended to read:

"40-5-236. Referral of paternity issue to district court -- record -- parties -- exclusion of other matters -- fees. (1) If the scientific evidence resulting from a paternity blood test does not exclude the alleged father and the alleged father continues to deny paternity, the alleged father shall file a written objection with the department within 20 days after service of the paternity blood test results. Upon receipt of the written objection, the department shall refer the matter to the district court for a determination based on the contents of the administrative hearing record and any further evidence that may be produced at trial. The matter must be heard by a judge sitting without a jury. Except as otherwise provided in 40-5-231 through 40-5-237, proceedings in the district court must be conducted pursuant to Title 40, chapter 6, part 1.

(2) The administrative record must include:

(a) a copy of the notice of ~~paternity determination~~ parental responsibility and the return of service of the notice;

(b) the alleged father's written denial of paternity, if any;

(c) the transcript of the administrative hearing;

(d) the paternity blood test results and any report of an expert based on the results; and

(e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they had been served with a summons and complaint. The department shall serve written notice upon the alleged father, as provided in 40-5-231(2), that the issue of paternity has been referred to the district court for determination.

(4) In a proceeding in the district court, the department shall appear on the issue of paternity only.

1 The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that
2 an appointment is necessary and in the best interest of the child. Neither the mother nor the child is a
3 necessary party, but either may testify as a witness.

4 (5) No other matter may be joined with an action to determine the existence or nonexistence of
5 the parent and child relationship under this section. The parties shall institute an independent action to
6 address other issues, including visitation and custody.

7 (6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees
8 for attorneys appointed under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110."

9
10 **Section 53.** Section 40-5-237, MCA, is amended to read:

11 **"40-5-237. District court paternity proceedings -- objection to tests -- additional tests -- expert's**
12 **report -- admissibility of evidence.** (1) In a matter referred to the district court, if an alleged father objects
13 to the procedures for or the results of a paternity blood test, the alleged father shall file a written objection
14 with the court within 20 days after service of the notice required by 40-5-236(3). The court shall order an
15 additional paternity blood test upon the alleged father's advance payment for additional testing if a written
16 objection is timely filed or at the request of the department. An additional test must be performed by the
17 same or another expert who is qualified in paternity blood testing. Failure of the alleged father to make a
18 timely challenge is considered a waiver of any defense to the test results or test procedures, including the
19 chain of custody.

20 (2) If an objection to the paternity blood test is not timely filed, the paternity blood test expert's
21 completed and certified report of the results and conclusions of a paternity blood test is admissible as
22 evidence without additional foundation testimony or other proof of authenticity and accuracy if the
23 laboratory in which the expert performed the test is accredited for parentage testing by the American
24 association of blood banks. Accreditation may be established by verified statement or reference to
25 published sources. This subsection does not limit the right of a party to contest the identity of persons
26 submitting to testing.

27 (3) In any hearing before the court or at trial, testimony relating to sexual intercourse of the mother
28 with any person who has been excluded from consideration as a possible father of the child involved by
29 the results of a paternity blood test is inadmissible in evidence.

30 (4) When a paternity blood test excludes an alleged father from possible paternity, the test is

conclusive evidence of nonpaternity of the alleged father for all purposes in the district court."

Section 54. Section 40-5-263, MCA, is amended to read:

"40-5-263. Central clearinghouse -- interstate enforcement services -- powers and duties of the department. (1) The department shall establish a clearinghouse for the registration of all interstate IV-D cases referred to the department by other states. The clearinghouse shall serve as the central point for the receipt and dissemination of information regarding interstate enforcement requests, including but not limited to:

(a) petitions under the Revised Uniform Reciprocal Enforcement of Support Act, Uniform Reciprocal Enforcement of Support Act, or the Uniform Interstate Family Support Act; and

(b) wage withholding requests under part 4 of this chapter.

(2) (a) A case must be referred to the clearinghouse to be processed as a IV-D case and receive the benefits of IV-D status and clearinghouse services.

(b) The clearinghouse may accept any interstate IV-D referral made by interstate application or by petition under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act. An application must be made on forms prescribed by the department.

(3) Upon certification by the initiating state that a case filed in the registry of foreign support orders, including a petition under the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or the Uniform Interstate Family Support Act, is eligible for IV-D services and that the obligor resides, has property, or derives income in this state, the department may: ~~establish or enforce a child support obligation by any appropriate statute, including the remedies in this chapter~~

(a) proceed under Title 40, chapter 5, part 1; or

(b) pursue any other remedy available to it to establish or enforce a support order.

(4) If necessary, the department shall establish the paternity of the child.

(5) The clearinghouse shall:

(a) review and acknowledge receipt of any interstate IV-D referral;

(b) request missing information from the initiating state;

(c) determine appropriate enforcement remedies and forward the referral to the appropriate enforcement unit;

(d) provide status updates to the initiating state, including the location of the responsible enforcement unit;

(e) locate an obligor and the obligor's assets, if necessary; and

(f) initiate a IV-D referral if services are provided by the department to a resident of this state and the obligor resides outside the state.

(6) If the department is providing support enforcement services to a resident of this state, the director or the director's designee may certify any interstate petition, application, and referral, including a petition under part 1 of this chapter.

(7) A lien created by operation of law or issued by order of a court or IV-D agency in another state to enforce a support order may, at the request of the other IV-D agency, be registered with the department. Upon registration, the lien applies to any of the obligor's real and personal property located in this state with the same force and effect as a lien established under 40-5-248. At the request of the other IV-D agency, a registered lien may be enforced by the department using any remedy available to enforce a support lien under 40-5-248."

Section 55. Section 40-5-264, MCA, is amended to read:

"40-5-264. Cooperative agreements. (1) The department may enter into cooperative agreements with any person, firm, corporation, association, political subdivision, Indian tribe or tribal organization as defined in 25 U.S.C. 450b, or department of this state as a cooperating contractor to provide enforcement services.

(2) A cooperating contractor:

(a) shall act as an independent support enforcement contractor if the cooperating contractor provides enforcement services; and

(b) may pursue any remedy available to the department, as limited by the terms of the cooperative agreement.

(3) The department may refer an enforcement case to a cooperating contractor in the county where the obligor resides."

Section 56. Section 40-5-271, MCA, is amended to read:

"40-5-271. Registration of support orders. (1) The department ~~shall establish and maintain a~~

1 ~~support order registry.~~

2 ~~(2) The registry must contain the support orders issued by the department.~~

3 ~~(3) In a IV D case, the department shall, upon the request of the obligor or the obligee, or may~~
4 ~~register a support order of a district court of this state or a support order of a court or administrative agency~~
5 ~~of another state with jurisdiction to enter the order. A certified copy of the order to be registered must~~
6 ~~accompany the written request for registration.~~

7 ~~(4) Upon registration, the support order must be treated in the same manner and have the same~~
8 ~~effect as a support order issued by the department, and an abstract of the order may be filed under the~~
9 ~~provisions of 40-5-227. Review of the order under 40-5-272 is available only when the department is~~
10 ~~providing child support enforcement services for the order. may, for the purpose of review and modification~~
11 ~~proceedings under 40-5-272 and 40-5-273, register support orders issued by a district court of this state~~
12 ~~or by a court or administrative agency of another state. Registration of the order under this section does~~
13 ~~not confer jurisdiction for any purpose other than for the review and modification process.~~

14 ~~(2) When the department conducts review and modification proceedings, the department shall give~~
15 ~~the parties notice and opportunity to contest registration of the order. A party seeking to vacate the~~
16 ~~registered order has the burden of proving that the court or agency issuing the order:~~

17 ~~(a) did not have jurisdiction to enter the order;~~

18 ~~(b) did not have personal jurisdiction over the party; or~~

19 ~~(c) did not give the party reasonable notice and opportunity to be heard before the order was~~
20 ~~entered.~~

21 ~~(3) (a) As an alternative to any other registration process or remedy available for the enforcement~~
22 ~~of a support order issued by a court or agency in another state, the department may register the support~~
23 ~~order under this subsection (3).~~

24 ~~(b) Registration under this subsection (3) is only for the purpose of enforcement and does not confer~~
25 ~~jurisdiction for any other purpose such as visitation, custody, or paternity disputes.~~

26 ~~(c) If an order is registered for enforcement under this subsection (3), the department shall notify~~
27 ~~the parties to the order of the registration. A copy of the registered order must be included with the notice.~~
28 ~~The notice must inform the parties:~~

29 ~~(i) of the amount of any alleged arrearage as of the date of the notice;~~

30 ~~(ii) that a party may request a hearing to vacate the registration or to assert defense to any alleged~~

1 arrears for any reason set out in subsection (3)(e);

2 (iii) that a hearing to contest the validity or enforcement of the order must be requested within 20
3 days after service of the notice; and

4 (iv) that failure to contest the validity or enforcement of the registered order in a timely manner will
5 result in confirmation of the order and enforcement of the order and the alleged arrears and will preclude
6 further contest of the order with respect to any matter that could have been asserted at the hearing.

7 (d) A party seeking to contest the validity or enforcement of a registered order shall request a
8 hearing within 20 days after service of the notice of registration. If a party fails to contest the validity or
9 enforcement of the registered order in a timely manner, the order is confirmed by operation of law. If a
10 party timely requests a hearing to contest the validity or enforcement of the order, the department shall
11 schedule the matter for hearing.

12 (e) A party contesting the validity or enforcement of a registered order or seeking to vacate the
13 registration has the burden of proving one or more of the following defenses:

14 (i) the court or agency issuing the order did not have subject matter jurisdiction to enter the order
15 or lacked personal jurisdiction over the contesting party;

16 (ii) the court or agency issuing the order did not give the party reasonable notice and opportunity
17 to be heard before the order was entered;

18 (iii) the order was obtained by fraud;

19 (iv) the issuing court or agency has stayed enforcement of the order pending appeal;

20 (v) the order has been vacated, suspended, or modified by a later order;

21 (vi) there is a defense under the law of this state to the remedy sought; or

22 (vii) the statute of limitations precludes enforcement of some or all of the arrears.

23 (f) If the contesting party does not establish a defense under subsection (3)(e) to the validity or
24 enforcement of the order, the department shall issue an order confirming the order. Confirmation of a
25 registered order, whether by operation of law or after notice and hearing, precludes further contest of the
26 order with respect to any matter that could have been asserted at the time of the registration. A confirmed
27 order is enforceable as of the date of confirmation in the same manner as an order issued by the department
28 or a district court of this state.

29 (g) In a proceeding for arrears, the statute of limitations under the laws of this state or of the issuing
30 state, whichever is longer, applies.

1 (h) Hearings under this subsection (3) are subject to the provisions of the Montana Administrative
2 Procedure Act and must initially be conducted by teleconferencing methods. At the request of a party and
3 upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the
4 hearings officer shall, at the close of a teleconference hearing, grant a de novo in-person hearing."

5
6 **Section 57.** Section 40-5-274, MCA, is amended to read:

7 **"40-5-274. Child support payments to follow the child.** (1) A support order issued or modified
8 under this part must contain a provision requiring the child support obligation to be paid to:

9 (a) the legal custodian of the minor child;

10 (b) ~~(i) any other person, organization, or agency having legal physical custody of the minor child~~
11 ~~or collecting child support on behalf of the minor child under a legal assignment of rights~~ a person,
12 organization, or agency to which the legal custodian voluntarily or involuntarily relinquishes physical
13 custody of the child; or

14 ~~(ii) the court for the benefit of the minor child;~~

15 (c) ~~any other person or agency designated as caretaker of the minor child by agreement of the legal~~
16 ~~custodian; or~~ to any other person, organization, or agency entitled by law, assignment, or similar reason
17 to receive or collect the child support obligation.

18 ~~(d) any assignee or other person, organization, or agency authorized to receive or collect child~~
19 ~~support.~~

20 (2) If the department is providing services under Title IV-D of the Social Security Act, payment of
21 support must be made through the department for distribution to the person, organization, or agency
22 entitled to the payment.

23 ~~(2)(3)~~ An order that omits the provision required by subsection (1) is subject to the requirements
24 of subsection (1) without need for an amendment to the order or for any further action by the department."
25

26 **Section 58.** Section 40-5-302, MCA, is amended to read:

27 **"40-5-302. Purpose -- applicability.** (1) The purpose of this part is to provide a direct method of
28 deducting money from a person's income for the payment of child support ~~if that person has been~~
29 ~~delinquent in the payment of court ordered child support.~~

30 (2) Income withholding under this part is available without amendment of the support order or

1 further action by a district court or other entity, even though the support order did not provide for
2 withholding or provided for other payment arrangements."

3
4 **Section 59.** Section 40-5-303, MCA, is amended to read:

5 **"40-5-303. Petition for income deduction -- who may initiate.** (1) If an obligor is exempted from
6 immediate income withholding under 40-5-315 or is not otherwise subject to an income-withholding order,
7 the obligor's income may be withheld for the payment of child support beginning on the day the obligor
8 becomes delinquent in the payment of support.

9 (2) ~~A petition for an income deduction~~ Income withholding for the payment of delinquent child
10 support payments may be made initiated by:

- 11 ~~(1)(a)~~ the person named as the recipient of the child support payments in the child support order;
12 ~~(2)(b)~~ the child or the guardian of the child named in the child support order; or
13 ~~(3)(c)~~ the department of public health and human services.

14 (3) (a) At the request of an initiating party who determines that an obligor is delinquent, the clerk
15 of court shall issue an order for income deductions provided for in 40-5-308 for immediate service upon
16 the obligor's payor or payors. The order is limited to current support unless modified to include arrears as
17 provided in 40-5-308.

18 (b) At the same time an income deduction order is issued, the requesting party shall notify the
19 obligor as provided in 40-5-305 that income deductions have been initiated.

20 (4) Deductions under this section for current support may be terminated only if:

21 (a) the district court determines after a hearing that the obligor was not delinquent when the
22 deduction order was issued;

23 (b) the obligation to pay support has terminated and all delinquencies are paid in full; or

24 (c) the department of public health and human services has superseded the deduction order under
25 authority of Title 40, chapter 5, part 4.

26 (5) As used in this part, the following definitions apply:

27 (a) "Employer" includes a payor.

28 (b) (i) "Income" means any form of periodic payment to a person, regardless of source, including
29 commissions, bonuses, workers' compensation, disability benefits, payments under a pension or retirement
30 program, interest and earnings, and wages.

(ii) Income does not include:

(A) an amount, other than creditor claims, required by law to be withheld, including federal, state, and local taxes and social security; or

(B) an amount exempted from judgment, execution, or attachment by federal or state law.

(c) "Payor" means any entity that pays income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, or state agency or an agent of any one of them, subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure."

Section 60. Section 40-5-304, MCA, is amended to read:

"40-5-304. When child support payments considered delinquent. (1) Nonpayment of child support required by ~~any a district court or administrative order of a district court~~ or by a similar order of a court of another jurisdiction becomes delinquent under this part ~~when the amount owed is equal to 3 months of child support payments~~ 8 working days after the last day of the month in which the payment is due.

(2) Child support payments may be considered delinquent under this part only in reference to a court or administrative order setting child support payments.

(3) ~~In the case of support orders not subject to immediate income withholding under 40-5-315, including cases in which the court or administrative authority has made a finding of good cause or alternative arrangement, the income of the obligor is subject to withholding under this part beginning on the date on which the obligor is found to be delinquent in the payment of support due under a support order in an amount equal to at least 3 months' support payments. Intervening agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part. For the purposes of this section, "alternative arrangement" has the meaning provided in 40-5-315(3)(b)."~~

Section 61. Section 40-5-305, MCA, is amended to read:

"40-5-305. Notice. ~~On petition for income deductions for payment of delinquent child support, the district court shall cause notice to be served upon the obligor, stating that if the delinquency is not discharged within 15 days, the court will order an income deduction for the payment of the delinquent child support and for the payment of current child support as it becomes due and payable. The notice shall also state that the obligor may contest the allegation that child support payments are delinquent.~~

1 (1) A party initiating income deductions under this part shall serve the obligor with notice if:

2 (a) an order for immediate income deductions is issued because of a delinquency;

3 (b) additional delinquencies accrued subsequent to the issuance of an income-deduction order and
4 the requesting party proposes to add those delinquencies to an existing order for income deductions;

5 (c) immediate withholding under 40-5-315 or delinquency withholding under 40-5-303 has
6 commenced for current support and there are delinquencies due for a period prior to issuance of the
7 income-deduction order that the requesting party proposes to add to the deduction order; or

8 (d) the obligation to pay current support has terminated and there are support arrears still owing
9 for the period prior to termination.

10 (2) The notice must contain a statement:

11 (a) of the amount subject to withholding, including a computation showing the period and total
12 amount of the delinquency as of the date of the notice;

13 (b) that withholding applies to all current and subsequent payors;

14 (c) of the procedures to follow if the obligor desires to contest income withholding on the grounds
15 that the initiation of withholding or the modification of an existing order for deductions is improper or that
16 the amount to be deducted is in error due to a mistake of fact; and

17 (d) of the period of time within which the obligor is required to file a request for hearing and that
18 failure to file the hearing request within the time limit will result in an income-deduction order being served
19 upon the payor for the amount stated in the notice.

20 (3) The notice must be served upon the obligor personally or by certified mail."

21
22 **Section 62.** Section 40-5-306, MCA, is amended to read:

23 **"40-5-306. Discharge of delinquency.** ~~If~~ (1) In a case in which only arrears are owed, if the
24 obligor pays the total amount of child support due and payable in arrears within the 15 days after service
25 of the notice specified in 40-5-305, no an order for deduction may not issue. This discharge of delinquency
26 does not affect or otherwise limit any action as a result of any subsequent delinquencies.

27 (2) If there is a current support obligation, payment of arrears after service of the order does not
28 prevent the issuance of an income-deduction order for the payment of current support."

29
30 **Section 63.** Section 40-5-307, MCA, is amended to read:

1 "40-5-307. **Delinquency of child support denied -- hearing.** If, within 15 days after service of a
2 notice under 40-5-305, the obligor responds to the notice and denies that ~~child support payments are~~
3 ~~delinquent~~ income withholding initiated because of a delinquency is proper or denies that the amount or
4 ~~arrears~~ stated in the notice is owing, the district court shall hold a hearing to determine whether ~~or not~~
5 ~~there is a deficiency in child support payments sufficient to be delinquent under 40-5-304~~ income
6 withholding will take place."

7
8 **Section 64.** Section 40-5-308, MCA, is amended to read:

9 "40-5-308. **Order for deduction from income for child support payments.** (1) ~~If the obligor fails~~
10 ~~to respond to notice within 15 days or if the district court determines that the obligor is delinquent in~~
11 ~~payment of child support as provided in 40-5-304, the district court shall issue an order to the obligor's~~
12 ~~employer ordering a deduction from the obligor's wages or salary for the payment of child support. The~~
13 ~~court may authorize the requesting party to continue an immediate income-deduction order issued because~~
14 ~~of a delinquency or may modify an existing deduction order if:~~

15 (a) ~~the obligor fails to timely respond to the notice provided under 40-5-305;~~

16 (b) ~~the obligor fails to appear at a scheduled hearing;~~

17 (c) ~~the court determines that the obligor is delinquent in the payment of support; or~~

18 (d) ~~the court determines there are new or additional delinquencies to be added to an existing~~
19 ~~deduction order.~~

20 (2) The order must state:

21 (a) the action involved;

22 (b) the total amount of back child support due and the amount of each court-ordered installment
23 of child support;

24 (c) the amount to be deducted from the ~~wages or salary of the obligor each pay period~~ obligor's
25 income and the amount, if any, allowed to the employer payor under 40-5-309(2) as a fee for handling the
26 deduction;

27 (d) the length of time the order is to remain in effect, if ascertainable; and

28 (e) the name and address of the ~~clerk of court~~ person or entity to whom the deduction is to be paid
29 by the employer payor."

1 **Section 65.** Section 40-5-309, MCA, is amended to read:

2 **"40-5-309. Amount to be deducted from income.** (1) (a) The amount of money to be deducted
3 each pay period from the obligor's income is:

4 (i) (A) the amount of money necessary to pay current installments of child support as they become
5 due and payable; plus

6 (B) the amount of money that, when deducted in equal amounts each pay period, will pay off all
7 outstanding child support payments delinquent within 2 years; or

8 (ii) not less than 25% of the obligor's disposable earnings.

9 (b) If withholding is annualized, when deducted in equal amounts, the amount withheld each pay
10 period must be sufficient to pay all installments due in a 12-month period under the order to withhold.

11 (2) The district court may allow a fee of not to exceed \$5 per deduction, which the ~~employer~~ payor
12 may deduct from the obligor's ~~wages or salary~~ income for the expense of administering the deduction.

13 (3) The total amount to be deducted under subsections (1) and (2) may not exceed the maximum
14 amount permitted under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b), as
15 amended.

16 (4) Except as provided in 40-5-315, the child support income deduction must cease when there
17 is no past-due child support owing, unless the district court orders continued income deductions for
18 payment of child support installments as they become due and payable."

19
20 **Section 66.** Section 40-5-310, MCA, is amended to read:

21 **"40-5-310. Priority of income deduction.** An order for the deduction of income for the payment
22 of delinquent child support payments takes precedence over any:

23 (1) assignment of ~~wages or salary~~ income;

24 (2) voluntary deductions from the obligor's ~~wages or salary~~ income; and

25 (3) other court-ordered garnishment of ~~wages or salary~~ income."

26
27 **Section 67.** Section 40-5-312, MCA, is amended to read:

28 **"40-5-312. Duties of ~~employers~~ payors.** (1) ~~An employer~~ A payor who has been served with an
29 order for deduction under this part shall deduct the amount designated in the order beginning not later than
30 the first pay period that occurs after 14 days from the service of the order. The ~~employer~~ payor shall, within

1 40 8 working days of the date the obligor is paid, promptly pay the deducted amount as directed by the
2 order. The ~~employer~~ payor shall include with the payment a statement indicating the date the amount was
3 deducted from the obligor's ~~wages or salary~~ income.

4 (2) Whenever ~~an employer~~ a payor receives more than one ~~wage~~ deduction order from the same
5 district court, the ~~employer~~ payor may combine all amounts deducted into a single payment for that month,
6 with the portion that is attributable to each obligor separately designated.

7 (3) Whenever there is more than one deduction order against a single obligor the ~~employer~~ payor
8 shall:

9 (a) honor all ~~wage~~ deduction orders to the extent that the total amount deducted from the obligor's
10 ~~wages or salary~~ income does not exceed the limits set in 40-5-309; and

11 (b) comply with the orders in the sequence in which they were served upon the ~~employer~~ payor
12 except for ~~income withholding~~ income-withholding orders issued by the department of public health and
13 human services. Under 40-5-423, orders issued by the department have priority over all other orders
14 without regard to the sequence in which they were served.

15 (4) The ~~employer~~ payor shall promptly notify the clerk of the district court that issued the deduction
16 order of the termination of the obligor's employment and provide the obligor's last-known address and the
17 name and address of the obligor's new ~~employer~~ payor, if known."

18
19 **Section 68.** Section 40-5-313, MCA, is amended to read:

20 "40-5-313. **Obligor rights protected -- penalties.** (1) An employer may not discharge, discipline,
21 or refuse to hire a person because:

22 (a) the person has a child support obligation;

23 (b) a withholding order has been issued for the person's ~~wages or salary~~ income; or

24 (c) proceedings have been initiated under this part.

25 (2) An employer who violates the provisions of this section may be fined not more than \$100."

26
27 **Section 69.** Section 40-5-314, MCA, is amended to read:

28 "40-5-314. **Civil liability for failure to comply with wage deduction order.** (1) ~~An employer~~ A payor
29 who knowingly fails to deduct support money from the obligor's ~~wages or salary~~ income and remit the
30 money ~~to the district court~~ when ordered to do so under this part is liable to the obligee of the support

1 order for any amount up to the accumulated amount the ~~employer~~ payor should have deducted and
2 remitted.

3 (2) ~~An employer~~ A payor who complies with a deduction order under this part is not liable to the
4 obligor or to any other person claiming rights derived from the obligor for wrongful deductions."

5
6 **Section 70.** Section 40-5-315, MCA, is amended to read:

7 **"40-5-315. Immediate income deductions.** (1) Notwithstanding any provision in this part requiring
8 a delinquency as a prerequisite to an order for income deductions, except as provided in subsection (2),
9 the ~~salaries and wages~~ income of a person obligated to pay child support by an order of a district court
10 issued after October 1, 1991, ~~are~~ is subject to an immediate deduction order under 40-5-308 on the
11 effective date of the order, regardless of whether there is a delinquency.

12 (2) An obligor's ~~salaries and wages~~ are income is not subject to deduction under this section in any
13 case in which the district court finds:

14 (a) that there is good cause not to require immediate deduction; or

15 (b) that there is an alternative arrangement between the parties for the payment of support that
16 provides sufficient security to ensure compliance with the arrangement.

17 (3) (a) For the purposes of subsection (2), a finding of good cause not to require immediate
18 deduction must, at a minimum, be based on:

19 (i) a written determination and explanation by the district court as to why implementation of
20 immediate deductions is not in the best interests of the child; and

21 (ii) in cases involving the modification of support orders, proof of timely payment of previously
22 ordered support.

23 (b) As used in subsection (2)(b), "alternative arrangement" means a written agreement that is
24 signed by the obligor and obligee and, in cases in which there is an assignment of support rights under
25 53-2-613, signed by the department of public health and human services, and that has been approved and
26 entered into the record by the district court that issued or modified the support order.

27 (4) The clerk of court shall administer immediate income deductions under this section. The clerk
28 of court, at any time after docketing the support order or modification of a support order, at the request
29 of the obligee, and without need for amendment to the support order or for any further action by the district
30 court, shall issue the order for income deductions provided for by 40-5-308 for service upon the obligor's

1 ~~employer payor~~. The deduction order must direct the ~~employer payor~~ to promptly deliver the amount
2 deducted to the ~~clerk of court~~ department of public health and human services as provided in [section 5]
3 for distribution to the obligee.

4 (5) ~~Wage deductions~~ Deductions under this section may be terminated only when:

5 (a) the obligation to pay support has terminated and all arrearages are paid in full;

6 (b) the obligor requests termination and the obligee and obligor have entered into an alternative
7 arrangement as set forth in subsection (2)(b); or

8 (c) the department of public health and human services has superseded the deduction order under
9 authority of Title 40, chapter 5, part 4.

10 (6) If a delinquency occurs subsequent to issuance of an immediate deduction order or if arrearages
11 occur prior to beginning the deductions, the arrearages may be added to the deduction order only after
12 compliance with the notice of hearing requirements of 40-5-305.

13 (7) (a) After October 1, 1991, whenever a support order is registered as provided by 40-5-184 or
14 other law, the support order is subject to immediate orders to deduct income under this section.

15 (b) Withholding income under this section must be imposed when an obligor has ~~wages or salaries~~
16 income derived from within this state and the support order was issued in another state.

17 (8) This section applies only to support orders that are not being enforced by the department of
18 public health and human services under Title IV-D of the Social Security Act. The withholding of income
19 for support orders being enforced by the department is provided for in Title 40, chapter 5, part 4, and those
20 procedures, if applicable, supersede the provisions of this section."

21
22 **Section 71.** Section 40-5-403, MCA, is amended to read:

23 **"40-5-403. Definitions.** As used in this part, the following definitions apply:

24 (1) "Alternative arrangement" means a written agreement signed by the obligor and obligee, and
25 signed by the department in the case of an assignment of rights under 53-2-613, that has been approved
26 and entered in the record of the court or administrative authority issuing or modifying the support order.

27 (2) "Department" means the department of public health and human services provided for in
28 2-15-2201.

29 (3) "Employer" includes a payor.

30 (4) ~~(3)~~ (4) "Income" means any form of periodic payment to a person, regardless of source, including

1 commissions, bonuses, workers' compensation, disability payments, payments under a pension or
2 retirement program, interest, and earnings and wages. However, income does not include:

3 (a) any amount required by law to be withheld, other than creditor claims, including federal, state,
4 and local taxes and social security; and

5 (b) any amounts exempted from judgment, execution, or attachment by federal or state law.

6 ~~(4)~~(5) "Obligee" means either a person to whom a duty of support is owed or a public agency of
7 this or another state to which a person has assigned the right to receive current and accrued support
8 payments.

9 ~~(5)~~(6) "Obligor" means a person who owes a duty to make payments under a support order.

10 ~~(6)~~(7) "Payor" means any payor of income to an obligor on a periodic basis and includes any
11 person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent
12 thereof, who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules
13 of Civil Procedure.

14 ~~(7)~~(8) "Support order" means an order of the district court of the state of Montana, an order of a
15 court of appropriate jurisdiction of another state, an administrative order established pursuant to
16 proceedings under part 2 of this chapter, or an order established by administrative hearing process of an
17 agency of another state with functions similar to those of the department set forth in part 2 of this chapter,
18 that provides a set and determinable amount for temporary or final periodic payment of funds for the
19 support of a child. Support order further includes the following:

20 (a) an order for reimbursement of public assistance money paid by a public agency for the benefit
21 of a minor child;

22 (b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial
23 parent of a child for whom child support is ~~awarded under the same order~~ collected under this chapter; and

24 (c) an order requiring payment of interest due on unpaid judgments for child support."
25

26 **Section 72.** Section 40-5-404, MCA, is amended to read:

27 **"40-5-404. Other remedies available.** (1) (a) The remedies provided in this part are in addition
28 to and not in substitution for any other remedy that may otherwise be available to the department, and the
29 department may simultaneously pursue other remedies to enforce a support obligation or to collect support
30 arrearages.

1 (b) If the department is enforcing a support order of another state, an Indian tribe, or a foreign
2 country under this part, the department may proceed under Title 40, chapter 5, part 1.

3 (2) (a) The department may enforce a support order of another state, an Indian tribe, or a foreign
4 country under this part without registration of the support order under 40-5-180, 40-5-271, or any other
5 law providing for registration of support orders.

6 (b) If the department is enforcing an order under subsection (2)(a), in addition to those defenses
7 available under this part, a party may contest the validity of the support order by proving any defense
8 contained in 40-5-190."

9
10 **Section 73.** Section 40-5-412, MCA, is amended to read:

11 **"40-5-412. Delinquency income withholding.** (1) (a) In the case of support orders not subject to
12 immediate income withholding under 40-5-411, including cases in which the court or administrative
13 authority has made a finding of good cause or determines that an alternative arrangement exists, the
14 income of the obligor is subject to withholding under this part beginning on the date on which the obligor
15 is found to owe unpaid support under the support order in an amount equal to or in excess of 1 month's
16 support payment day the obligor becomes delinquent in the payment of support. Intervening agreements
17 or orders establishing a schedule for payment of delinquent support do not prevent income withholding
18 under this part.

19 (b) For purposes of this section, an obligor becomes delinquent 8 working days after the last day
20 of the month in which the payment is due.

21 (c) Agreements or orders establishing a schedule for payment of delinquent support do not prevent
22 income withholding under this part.

23 (2) (a) If the department determines that an obligor is delinquent, the department may immediately
24 send an order to withhold income to any payor. The order must be limited to current support unless
25 modified to include arrears as provided in 40-5-413.

26 (b) At the same time an order to withhold income is sent to a payor, the department shall notify
27 the obligor as provided in 40-5-413 that income withholding has been initiated.

28 (2)(3) Notwithstanding the provisions of subsection (1), income withholding must be initiated,
29 without regard to whether there is an arrearage a delinquency, on the earlier of:

30 (a) the date the obligor requests that withholding begin; or

(b) at the request of the obligee if the obligor is found, after an opportunity for hearing under 40-5-414, to be delinquent under the terms of an alternative arrangement for the payment of support.

~~(3)(4)~~ To accomplish the purpose of subsection (1), the department shall monitor all support payments not otherwise subject to immediate withholding. To facilitate monitoring, the department by written notice to the obligor may direct an obligor ~~who does not owe unpaid child support equal to or in excess of 1 month's support payment~~ to pay all support through the department, notwithstanding a court order directing payments to be made to the obligee or clerk of court.

~~(4)(5)~~ The only basis for contesting withholding under this section is a mistake of fact, which includes a mistake:

(a) concerning the obligor's identity;

(b) concerning the existence of the support obligation;

(c) concerning the amount of support to be paid;

~~(d) in the determination that the delinquent support amounts owed are equal to or greater than 1 month's support payment~~ obligor is delinquent in the payment of support;

(e) in computation of delinquent support amounts owed; or

(f) in the allegation that the obligor is in default of an alternative agreement.

(6) A mistake of fact under subsection (5) does not include mistakes relating to issues of paternity or establishment of custody and visitation."

Section 74. Section 40-5-413, MCA, is amended to read:

"40-5-413. Notice of intent to withhold income. (1) ~~Prior to service of an initial order or a modification of an existing order on the payor under 40-5-415, the~~ The department shall serve upon the obligor with a notice of the intended action ~~when if:~~

(a) income withholding is initiated ~~under 40-5-412~~ because of a delinquency;

(b) additional arrearages ~~have~~ accrued subsequent to the issuance of an order to withhold and the department proposes to add those arrearages to ~~the~~ an existing withholding order; or

(c) immediate withholding or delinquency withholding has commenced for current support and there are arrearages due for a period prior to entry of the order to withhold that the department proposes to add to the withholding order.

(2) The notice must contain a statement:

1 (a) of the amount ~~to be withheld~~ subject to withholding, including a computation showing the
2 period and total amount of the arrearages as of the date of the notice;

3 (b) that withholding applies to all current and subsequent payors;

4 (c) ~~of the obligor's right to a hearing under 40-5-414 to contest the initiation of income withholding~~
5 ~~or modification of an existing order on the ground that the intended action is not proper because of mistake~~
6 ~~of fact, as provided in 40-5-412(4) of the procedures to follow if the obligor desires to contest income~~
7 ~~withholding on the grounds that the initiation of withholding or the modification of an existing withholding~~
8 ~~order is improper or that the amount to be withheld is in error due to a mistake of fact, as provided in~~
9 ~~40-5-412;~~

10 (d) of the period of time within which the obligor ~~must~~ is required to file a request for a hearing and
11 that failure to file a request ~~the hearing~~ within the time limit will result in income withholding orders being
12 served upon the payor for the amount stated in the notice; and

13 (e) in those cases in which withholding is being initiated at the request of an obligee without regard
14 to whether there is an arrearage as provided in 40-5-412(2)(3), a statement that the obligor can require the
15 obligee to appear and show proof that the obligor is not meeting the terms of the alternative arrangement.

16 (3) The notice must be served upon the obligor personally or by certified mail."

17
18 **Section 75.** Section 40-5-414, MCA, is amended to read:

19 "**40-5-414. Hearing.** (1) (a) To contest the withholding of income initiated ~~under 40-5-412~~ because
20 of a delinquency or the modification of an existing order to withhold, an obligor may within 10 days of
21 being served with notice of intent to withhold income under 40-5-413 file with the department a written
22 request for an administrative hearing to be held pursuant to the contested case provisions of Title 2,
23 chapter 4, part 6.

24 (b) The obligor shall include with the hearing request a statement of one or more of the grounds
25 for contesting income withholding provided in 40-5-412. If the hearing request fails to include that
26 statement, the hearings officer may deny the hearing for failure to state an issue upon which a hearing may
27 be granted.

28 (2) Venue for the administrative hearing may be in the county where the obligor resides if the
29 obligor resides in this state, the county in which the payor or the payor's agent is located, or the county
30 in which the department or any of its regional offices is located.

(3) The ~~administrative~~ hearing must initially be held by teleconferencing methods ~~unless the obligor or the department expressly requests an in-person hearing before the hearings examiner and is subject to the Montana Administrative Procedure Act. At the request of a party and upon a showing that the party's case was substantially prejudiced by lack of an in-person hearing, the hearings officer shall grant a de novo in-person hearing.~~

(4) If the obligor ~~requests~~ files a timely request for a hearing within the 10-day period:

~~(a) that includes a statement showing a probable mistake of fact,~~ the initiation of delinquency income withholding by the department and the modification of an existing withholding order ~~must~~ may be stayed upon written request of the obligor until conclusion of the hearing or the date of the hearing if the obligor fails to appear at the scheduled hearing. However, ~~in a proceeding to initiate income withholding,~~ if the obligor is only contesting an arrearage amount and is not contesting withholding for current support, income withholding for current support is not stayed. In a proceeding to modify an existing order, income withholding under the existing order to withhold is not stayed.

~~(b) the department shall, within 45 days of the service of the notice of intent to withhold income, inform the obligor of the hearing results concerning whether income withholding will take place.~~

(5) The department ~~shall issue an order to~~ may continue an order to withhold income issued because of a delinquency or a modified may modify an existing order to withhold ~~in accordance with 40-5-415 if:~~

(a) the obligor fails to file a timely written request for hearing ~~with the department within the specified 10-day period~~ that includes the statement showing a mistake of fact;

(b) the obligor fails to appear at a scheduled hearing;

(c) the hearings examiner determines from the evidence that the obligor ~~owes unpaid support equal to or in excess of 1 month's support obligation and the amount of arrearages owing is determined and adjudged to be a fixed and certain sum~~ is delinquent in the payment of support;

(d) there is an existing order to withhold and if the hearings examiner determines from the evidence that the obligor owes new or additional amounts in arrears; or

(e) in cases in which income withholding is being initiated at the request of an obligee without regard to whether there is an arrearage, the hearings examiner determines from the evidence that the obligor did not meet the terms of the alternative arrangement.

(6) For purposes of the hearing process, arrearages of support must be computed on the basis of

1 the amount owed and unpaid on the date on which the obligor was served with the notice of intent to
2 withhold income. When ~~the department is enforcing a current support obligation~~ income withholding is
3 initiated because of a delinquency, payment of the arrearage after service of the notice or after service of
4 an order to withhold on a payor is not a basis for not initiating or continuing income withholding.

5 ~~(7) In a case initiated because an arrearage has accrued or because additional income is being~~
6 ~~withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to~~
7 ~~withhold income, must be informed of the hearing decision on whether income withholding will take place.~~

8 ~~(8)(7)~~ If the obligor fails to request a hearing within 10 days after service of the notice of intent
9 to withhold or fails to appear at a scheduled hearing or if the hearings examiner determines that the obligor
10 owes ~~a combination of unpaid support equal to or in excess of 1 month's support obligation~~ unpaid support
11 or determines that a modification of an existing order is proper, the department shall ~~proceed with the~~
12 ~~intended action~~ issue an order to withhold income in accordance with 40-5-415."

13
14 **Section 76.** Section 40-5-421, MCA, is amended to read:

15 **"40-5-421. Duties of payor.** (1) A payor who has been served with an order to withhold and
16 deliver income shall deduct the amount designated in the order beginning not later than the first pay period
17 that occurs after ~~14 days from the~~ service of the order. The payor shall, within ~~40~~ 7 working days of the
18 date the obligor is paid, promptly deliver the amount withheld to the department as directed by the order
19 or in accordance with any subsequent modification of the order received from the department. The payor
20 shall include with the payment a statement indicating the date the amount was withheld from the obligor's
21 income.

22 (2) Whenever the payor is obligated to withhold income for more than one obligor, the payor may
23 combine all amounts withheld into a single payment for that month with the portion ~~thereof which~~ of the
24 withholding that is attributable to each obligor separately designated.

25 (3) Whenever there is more than one order for withholding against a single obligor, the payor ~~must~~
26 shall comply with the orders in the sequence in which they were served upon the payor and ~~must shall~~
27 honor all withholding orders to the extent that the total amount withheld from the obligor's wages or salary
28 does not exceed the limits set in 40-5-416.

29 (4) The payor ~~must~~ shall promptly notify the department of the termination of the obligor's
30 employment or other source of income and provide the obligor's last-known address and the name and

1 address of the obligor's new employer or other source of income, if known to the payor."

2
3 **Section 77.** Section 40-5-423, MCA, is amended to read:

4 **"40-5-423. Priority of income withholding.** An order to withhold and deliver income under this part
5 takes priority over any:

6 (1) wage or income deduction order under any other state law and any income-withholding order
7 issued in another state and sent to a payor in this state;

8 (2) voluntary or involuntary assignment of wages;

9 (3) other voluntary deductions from the obligor's income;

10 (4) levies, writs of execution, or garnishments of the obligor's income; and

11 (5) any other claims by creditors."
12

13 **Section 78.** Section 40-5-443, MCA, is amended to read:

14 **"40-5-443. Payors to provide information -- exemption from liability.** (1) For the purposes of this
15 part, upon written request by the department or by another IV-D agency, a payor or former payor and any
16 labor union of which the obligor or obligee is or may have been a member shall provide the ~~department~~
17 requester with the following information, if known, regarding the obligor or obligee:

18 (a) last-known residential address;

19 (b) social security number;

20 (c) dates of employment or union membership;

21 (d) amounts of wages, salaries, commissions, contract proceeds, and other earnings or amounts
22 paid;

23 (e) whether health insurance coverage is or was available through the payor or union and, if so:

24 (i) the name of the insurer or health care provider;

25 (ii) the policy numbers or other identifiers; and

26 (iii) the persons covered; and

27 (f) names, telephone numbers, and addresses of current and former employers, payors, and unions.

28 (2) A payor or labor union that discloses information ~~to the department~~ in compliance with this
29 section is exempt from any liability to the obligor or obligee that may result from the disclosure.

30 (3) Failure to disclose information in compliance with this section subjects the payor or labor union

1 to the sanctions provided in 40-5-226."

2
3 **Section 79.** Section 40-5-701, MCA, is amended to read:

4 **"40-5-701. Definitions.** As used in this part, the following definitions apply:

5 (1) (a) "Child" means:

6 (i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member
7 of the armed forces of the United States;

8 (ii) a person under 19 years of age who is still in high school;

9 (iii) a person who is mentally or physically incapacitated when the incapacity began prior to that
10 person reaching 18 years of age; and

11 (iv) in IV-D cases, a person for whom:

12 (A) support rights are assigned under 53-2-613;

13 (B) a public assistance payment has been made;

14 (C) the department is providing support enforcement services under 40-5-203; or

15 (D) the department has received a referral for interstate services from an agency of another state
16 under the provisions of the Uniform Interstate Family Support Act, the Revised Uniform Reciprocal
17 Enforcement of Support Act, the Uniform Reciprocal Enforcement of Support Act, or under Title IV-D of
18 the Social Security Act.

19 (b) The term may not be construed to limit the ability of the department to enforce a support order
20 according to its terms when the order provides for support extending beyond the time the child reaches 18
21 years of age.

22 (2) "Delinquency" means a support debt or support obligation due under a support order in an
23 amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent
24 to suspend a license.

25 (3) "Department" means the department of public health and human services.

26 (4) "IV-D case" means a case in which the department is providing support enforcement services
27 as a result of:

28 (a) an assignment of support rights under 53-2-613;

29 (b) a payment of public assistance;

30 (c) an application for support enforcement services under 40-5-203; or

(d) a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or under Title IV-D of the Social Security Act.

(5) "License" means a license, certificate, registration, permit, or any other authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, ~~or~~ profession, recreational activity, or any other privilege that is subject to suspension, revocation, forfeiture, ~~or~~ termination, or a declaration of ineligibility to purchase by the licensing authority prior to its date of expiration.

(6) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

(7) "Obligee" means:

(a) a person to whom a support debt or support obligation is owed; or

(b) a public agency of this or another state that has the right to receive current or accrued support payments or that is providing support enforcement services under this chapter.

(8) "Obligor" means a person who owes a duty of support or who is subject to a subpoena or warrant in a paternity or child support proceeding.

(9) "Order suspending a license" means an order issued by a support enforcement entity to suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social security number of the obligor.

(10) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support debt and, if applicable, current and future support.

(11) "Recreational activity" means an activity for which a license or permit is issued by the department of fish, wildlife, and parks under Title 87, chapter 2, part 6 or 7, except 87-2-708 or 87-2-711, or under sections 87-2-505, 87-2-507, 87-2-508, or 87-2-510.

(12) "Subpoena" means a writ or order issued by a district court or the department in a proceeding or as part of an investigation related to the paternity or support of a child that commands a person to appear at a particular place and time to testify or produce documents or things under the person's control.

~~(13)~~ (13) "Support debt" or "support obligation" means the amount created by:

1 (a) the failure to provide support to a child under the laws of this or any other state or a support
2 order; or

3 (b) a support order for spousal maintenance if the judgment or order requiring payment of
4 maintenance also contains a judgment or order requiring payment of child support for a child for whom the
5 person awarded maintenance is the custodial parent.

6 ~~(12)~~(14) "Support enforcement entity" means:

7 (a) in IV-D cases, the department; or

8 (b) in all other cases, the district court that entered the support order or a district court in which
9 the support order is registered.

10 ~~(13)~~(15) "Support order" means an order that provides a determinable amount for temporary or final
11 periodic payment of a support debt or support obligation and that may include payment of a determinable
12 or indeterminable amount for insurance covering the child issued by:

13 (a) a district court of this state;

14 (b) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

15 (c) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

16 (d) an administrative agency of another state with a hearing function and process similar to those
17 of the department.

18 (16) "Suspension" includes the withdrawal, withholding, revocation, forfeiture, or nonissuance of
19 a license and license privileges.

20 (17) "Warrant" means a bench warrant, a warrant to appear, an order to show cause, or any other
21 order issued by the district court relating to the appearance of a party in a paternity or child support
22 proceeding."

23
24 **Section 80.** Section 40-5-702, MCA, is amended to read:

25 **"40-5-702. Notice of intent to suspend license.** (1) Upon the petition of an obligee alleging the
26 existence of a delinquency or upon the failure of an obligor to comply with a subpoena or warrant, a
27 support enforcement entity may issue a notice of intent to suspend a license.

28 (2) The notice must be served upon the obligor personally or by certified mail and may:

29 (a) in a IV-D case, be incorporated into any notice served under Title 17, chapter 4, part 1, or Title
30 40, chapter 5, part 2 or 4;

(b) in all other cases, be combined with any other enforcement proceeding.

(3) The notice must state that the obligor's license will be suspended 60 days after service unless within that time the obligor:

(a) pays the entire support debt stated in the notice;

(b) enters into a payment plan approved by the support enforcement entity; ~~or~~

(c) complies with the subpoena or warrant; or

~~(d)~~ appears and shows cause in a hearing before the support enforcement entity under 40-5-703 that suspension of a license is not appropriate.

(4) In a IV-D case, the notice must advise the obligor that hearings conducted under 40-5-703 are subject to the contested case provisions of the Montana Administrative Procedure Act."

Section 81. Section 40-5-703, MCA, is amended to read:

"40-5-703. Hearing -- order suspending license. (1) To show cause why suspension of a license would not be appropriate, the obligor shall request a hearing from the support enforcement entity that issued the notice of intent to suspend the license. The request must be made within 60 days of the date of service of the notice.

(2) Upon receipt of a request for hearing from an obligor, the support enforcement entity shall schedule a hearing for the purpose of determining if suspension of the obligor's license is appropriate. The support enforcement entity shall stay suspension of the license pending the outcome of the hearing.

(3) The only issues that may be determined in a hearing under this section are the amount of the support debt or support obligation, if any, whether or not a delinquency exists, ~~and~~ whether or not the obligor has entered into a payment plan, and whether or not the obligor failed to comply with a subpoena or warrant.

(4) If an obligor fails to respond to a notice of intent to suspend a license, fails to timely request a hearing, or fails to appear at a regularly scheduled hearing, the obligor's defenses, objections, or request for a payment plan must be considered to be without merit and the support enforcement entity shall enter a final decision and order accordingly.

(5) If the support enforcement entity determines that the obligor owes a delinquency and that the obligor has not entered into a payment plan or that the obligor failed to comply with a subpoena or warrant, the support enforcement entity shall issue an order suspending the obligor's license and ordering the obligor

1 to refrain from engaging in the licensed activity. The support enforcement entity shall send a copy of the
2 order suspending a license to ~~the licensing authority and the obligor~~ and shall notify the licensing authority
3 in writing of the suspension. Notification to the licensing authority is not required if the support
4 enforcement entity has previously suspended the license of the obligor and the suspension is still in effect.

5 (6) The determinations of the department under this section are a final agency decision and are
6 subject to judicial review under 40-5-253 and the Montana Administrative Procedure Act.

7 (7) A determination made by the support enforcement entity under this part is independent of any
8 proceeding of the licensing authority to suspend, revoke, deny, terminate, or renew a license."

9
10 **Section 82.** Section 40-5-704, MCA, is amended to read:

11 **"40-5-704. Suspension, denial, and nonrenewal of licenses.** (1) Upon receipt of ~~an order~~
12 ~~suspending a license~~ the notice of suspension of the license under 40-5-703(5), a licensing authority shall
13 implement the suspension of the license by:

- 14 (a) determining if it has issued a license to the obligor whose name appears on the ~~order~~ notice;
15 (b) entering the suspension on the appropriate records;
16 (c) reporting the suspension as appropriate; ~~and~~
17 (d) denying recreational activity licenses for the next applicable license year; and
18 ~~(d)(e)~~ if required by law, demanding surrender of the suspended license.

19 (2) An order issued by a support enforcement entity under 40-5-703 suspending a license and the
20 notice of suspension given under 40-5-703(5) must be processed by the licensing authority without an
21 additional review or hearing involving the licensing authority concerning suspension of the license.

22 (3) Notwithstanding the provisions of any other law setting terms of suspension, revocation, denial,
23 termination, or renewal of a license, an order issued by a support enforcement entity suspending a license
24 must be implemented by the licensing authority and continues until the support enforcement entity advises
25 the licensing authority that the suspension has been stayed or terminated.

26 (4) In the event that a license is suspended, any funds paid by the obligor to the licensing authority
27 for costs related to issuance, renewal, or maintenance of a license may not be refunded to the obligor.

28 (5) Unless an order staying suspension of a license is in effect, an obligor who continues to engage
29 in the business, occupation, profession, recreational activity, or other licensed activity while the obligor's
30 license is suspended under this section is guilty of a misdemeanor and upon conviction shall be punished

1 by a fine of not less than \$250 or more than \$500 or by imprisonment in the county jail for a term not to
2 exceed 6 months, or both. Upon conviction of a second or subsequent violation, the obligor shall be
3 punished by a fine of not less than \$500 or more than \$2,000 or by imprisonment in the county jail for a
4 term not to exceed 1 year, or both. The support enforcement entity or the licensing authority may elect the
5 remedy under this section or any other remedy provided for engaging in a licensed activity without a license
6 or while the license is suspended.

7 (6) The licensing authority is exempt from liability to the licensee for activities conducted in
8 compliance with this part.

9 (7) The licensing authority has no jurisdiction to modify, remand, reverse, vacate, or stay the order
10 of the support enforcement entity suspending a license.

11 (8) To the extent that inconsistencies exist between this part and the procedural requirements for
12 suspension of a license issued by the department, this part supersedes those requirements."

13
14 **Section 83.** Section 40-5-709, MCA, is amended to read:

15 **"40-5-709. Nondisciplinary suspension for failure to pay child support.** Notwithstanding any other
16 provision of this title, the ~~department~~ support enforcement entity has the authority to suspend a license or
17 privilege to obtain a license under this part without any action by the licensing authority. The licensing
18 authority shall, upon receipt of ~~an order issued by~~ notice of suspension of the license under 40-5-703(5)
19 from the support enforcement entity, suspend the license or privilege to obtain a license of the named
20 individual. The suspension must be nondisciplinary for professional or occupational licenses, and the
21 provisions of 2-4-631 do not apply."

22
23 **Section 84.** Section 40-5-710, MCA, is amended to read:

24 **"40-5-710. Stay of suspension of license -- payment plan -- hardship.** (1) An obligor may at the
25 time of the hearing conducted under 40-5-703 or, except for a recreational activity license, at any time after
26 the hearing, petition the support enforcement entity for an order staying suspension of the license.

27 (2) The support enforcement entity shall consider the obligor's petition for a stay separately from
28 any determination on whether suspension of a license is appropriate.

29 (3) The support enforcement entity may stay suspension of a license upon a showing that
30 suspension or continued suspension of a license would create a significant hardship to the obligor, to the

obligor's employees, to legal dependents residing in the obligor's household, or to persons, businesses, or other entities served by the obligor.

(4) A stay terminates upon:

- (a) termination of the circumstances upon which a hardship is based;
- (b) failure by the obligor to abide by the terms and conditions of a payment plan; or
- (c) the date of termination, if any, provided in the order staying suspension of the license.

(5) If the licensing authority has been notified of an order suspending a license, the support enforcement entity shall notify the licensing authority of any stay or reinstatement unless the support enforcement entity has suspended the license of the obligor for another delinquency or for failure to comply with a subpoena or warrant and the suspension for the other delinquency or failure to comply with a subpoena or warrant is still in effect. The support enforcement entity shall send a copy of any order staying or reinstating suspension of the license to the ~~licensing authority and the~~ obligor.

(6) (a) Upon receipt of ~~an order~~ a notice staying or reinstating suspension of the license, the licensing authority shall:

- (i) enter the information on appropriate records;
- (ii) report the action as appropriate; and
- (iii) demand surrender of the suspended license or return the reinstated license.

(b) Further action by the licensing authority is not necessary to implement the stay or reinstatement of suspension of the license."

Section 85. Section 40-5-711, MCA, is amended to read:

"40-5-711. Termination of order to suspend license. (1) ~~When~~ Except as provided in subsection (3), when the support enforcement entity determines that the support debt or support obligation is paid in full or the obligor has complied with the subpoena or warrant, it shall terminate the order suspending the license. The support enforcement entity shall send a copy of the order terminating the suspension of the license to the ~~licensing authority and the~~ obligor.

(2) Entry of an order terminating suspension of a license does not limit the ability of a support enforcement entity to issue a new order suspending the license of the same obligor in the event of another delinquency or failure to comply with a subpoena or warrant.

(3) A suspension of a recreational activity license is effective for the license year. The suspension

1 does not terminate if the support enforcement entity determines that the support debt or support obligation
2 is paid in full or the obligor has complied with the subpoena or warrant."

3
4 **Section 86.** Section 40-6-102, MCA, is amended to read:

5 **"40-6-102. Definitions.** As used in this part, the following definitions apply:

6 (1) "Blood test" means a test that demonstrates through examination of genetic markers either that
7 an alleged father is not the natural father of a child or that there is a probability that an alleged father is the
8 natural father of a child. The genetic markers may be identified from a person's blood or a tissue sample.
9 The blood or tissue sample may be taken by blood drawing, buccal swab, or any other method approved
10 by the American association of blood banks. A blood test may include but is not limited to the human
11 leukocyte antigen test and DNA probe technology.

12 (2) "Parent and child relationship" means the legal relationship existing between a child and the
13 child's natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties,
14 and obligations. It includes the mother and child relationship and the father and child relationship.

15 (3) "Support judgment" or "support order" means an order, whether temporary or final, that
16 provides for the periodic payment of an amount of money expressed in dollars for the support of a child,
17 including medical and health needs, child care, education, recreation, clothing, transportation, and other
18 related expenses and costs specific to the needs of the child."

19
20 **Section 87.** Section 40-6-105, MCA, is amended to read:

21 **"40-6-105. Presumption of paternity.** (1) A person is presumed to be the natural father of a child
22 if any of the following occur:

23 (a) the person and the child's natural mother are or have been married to each other and the child
24 is born during the marriage or within 300 days after the marriage is terminated by death, annulment,
25 declaration of invalidity, or divorce or after a decree of separation is entered by a court;

26 (b) before the child's birth, the person and the child's natural mother have attempted to marry each
27 other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or
28 could be declared invalid, and:

29 (i) if the attempted marriage could be declared invalid only by a court, the child is born during the
30 attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity,

1 or divorce; or

2 (ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after
3 the termination of cohabitation;

4 (c) after the child's birth, the person and the child's natural mother have married or attempted to
5 marry each other by a marriage solemnized in apparent compliance with law, although the attempted
6 marriage is or could be declared invalid, and:

7 (i) the child's mother and the child's alleged father have acknowledged the alleged father's
8 paternity of the child in writing in accordance with subsection (1)(e) and the acknowledgment is filed with
9 the department of public health and human services ~~or with the district court for the county where the~~
10 ~~person resides or for any county where the child support enforcement division of the department of public~~
11 ~~health and human services maintains a regional office;~~

12 (ii) with the person's consent, the person is named as the child's father on the child's birth
13 certificate; or

14 (iii) the person is obligated to support the child under a written voluntary promise or by court order;

15 (d) while the child is under the age of majority, the person receives the child into the person's home
16 and openly represents the child to be the person's natural child;

17 (e) the child's mother and the child's alleged father acknowledge the alleged father's paternity of
18 the child in a paternity acknowledgment form that is provided by the department of public health and
19 human services ~~and filed with the department or with the district court of the county where the person~~
20 ~~resides or for any county where the child support enforcement division of the department of public health~~
21 ~~and human services maintains a regional office.~~ The department of public health and human services ~~or the~~
22 ~~district court~~ shall accept and file the completed form. As a part of a voluntary acknowledgment process,
23 the department of public health and human services shall ~~provide~~ make written and oral information
24 available to the parents regarding the rights and responsibilities of acknowledging paternity. If another
25 person is presumed under this section to be the child's father, acknowledgment may be effected only with
26 the written consent of the presumed father or after the presumption has been rebutted. The presumption
27 of paternity is created when the acknowledgment is filed with the department.

28 (f) the scientific evidence resulting from a blood test, whether ordered by a court or administrative
29 agency of competent jurisdiction or agreed to by the parties, shows a 95% or higher statistical probability
30 of paternity;

1 (g) the person is presumed to be the child's natural father under the laws of the state or Indian
2 territory in which the child was born.

3 (2) An acknowledgment is binding on a parent who executes it, whether or not the parent is a
4 minor.

5 (3) A Except for presumptions of paternity that are conclusive or irrebuttable under subsections
6 (1)(g) and (5), a presumption under this section may be rebutted:

7 (a) in an appropriate action by a preponderance of the evidence; or

8 (b) by scientific evidence resulting from a blood test that excludes the person as the child's natural
9 parent.

10 (4) (a) A presumption of paternity established under this section is a sufficient basis for establishing
11 a support order.

12 (b) If a presumption is later rebutted or set aside and the person is under an order to pay support
13 for the child, the person may only be relieved of support installments that accrued from the date of the
14 order declaring the presumption to be rebutted.

15 (5) (a) An acknowledgment of paternity under subsection (1)(e) may be rescinded by a signatory
16 at any time within 60 days after it was signed by filing a notice of withdrawal with the department of public
17 health and human services. The notice of withdrawal must include an affidavit attesting that a copy of the
18 notice was provided to any parent who signed the acknowledgment form.

19 (b) Without need for ratification by court or administrative proceedings, an acknowledgment of
20 paternity under subsection (1)(e) becomes, as a matter of law, an irrebuttable presumption of paternity on
21 the earlier of the date:

22 (i) the acknowledgment is not timely rescinded as provided in subsection (5)(a); or

23 (ii) a court or administrative judgment, decree, or order is entered that establishes paternity or a
24 support order, when that proceeding includes the signatory.

25 (c) An irrebuttable presumption of paternity under this subsection (5) has the same force and effect
26 as a district court judgment adjudicating paternity and may only be set aside for fraud, duress, or material
27 mistake of fact. The burden of proof is on the person seeking to set the presumption aside. Except for
28 good cause, legal responsibilities arising from the paternity acknowledgment may not be stayed pending
29 the outcome of an action to set aside the presumption."

Section 88. Section 40-6-111, MCA, is amended to read:

"40-6-111. **Pretrial proceedings.** (1) As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing ~~shall~~ must be held. The court may order that the hearing be held before a referee. The public ~~shall~~ must be barred from the hearing. A record of the proceeding ~~shall~~ must be kept.

(2) Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order ~~him~~ the witness to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that ~~his~~ the testimony or evidence might tend to incriminate ~~him~~ the witness, the court may grant ~~him~~ the witness immunity from all criminal liability on account of the testimony or evidence ~~he~~ the witness is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence ~~he~~ that the witness is required to produce, except for perjury committed in ~~his~~ the testimony. The refusal of a witness who has been granted immunity to obey an order to testify or produce evidence is a civil contempt of the court.

(3) Upon motion, a temporary support order may be issued at any time during a paternity action when there is clear and convincing evidence of paternity in the form of blood test results or other evidence. The temporary support order must be established according to the uniform child support guidelines adopted under 40-5-209."

Section 89. Section 40-6-115, MCA, is amended to read:

"40-6-115. **Civil action.** (1) An action under this part is a civil action governed by the rules of civil procedure. The action must be heard by a judge sitting without a jury. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Sections 40-6-111(2), 40-6-112, and 40-6-113 apply to all actions brought under this part.

(2) Testimony relating to sexual access to the mother by an unidentified person at any time or by an identified person at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

(3) In an action against an alleged father, evidence offered by the alleged father with respect to a person who is not subject to the jurisdiction of the court concerning sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the alleged father has undergone and made available to the court blood tests, the results of which do not exclude the

1 possibility of the alleged father's paternity of the child. A person who is identified and is subject to the
2 jurisdiction of the court must be made a defendant in the action.

3 (4) If a blood test has been initially ordered under this part and a party objects to the blood test
4 results, the objection must be filed within 20 days after service of the blood test results. If an objection is
5 filed, and upon the alleged father's advance payment for additional testing, the court shall order an
6 additional blood test. If no objection is made, the test results are admissible as evidence of paternity
7 without the need for foundation testimony or other proof of authenticity or accuracy. This subsection does
8 not limit the right of a party to contest the identity of persons submitting to testing.

9 (5) If the alleged father fails to answer or to appear at a scheduled hearing or for a scheduled blood
10 test, the district court shall enter an order declaring the alleged father the legal father of the child. The
11 district court may not enter an order under this section if there is more than one alleged father unless the
12 default applies to only one of them and all others have been excluded by the results of blood testing.

13 (6) Bills for pregnancy, childbirth, and paternity blood testing are admissible as evidence without
14 third-party foundation testimony and are prima facie evidence of the amounts incurred."

15
16 **Section 90.** Section 40-6-116, MCA, is amended to read:

17 **"40-6-116. Judgment or order.** (1) The judgment or order of the court determining the existence
18 or nonexistence of the parent and child relationship is determinative for all purposes.

19 (2) If the judgment or order of the court is at variance with the child's birth certificate, the court
20 shall order that a substitute birth certificate be issued under 40-6-123.

21 (3) (a) The judgment or order may contain any other provision directed against the appropriate
22 party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the
23 child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the
24 best interest of the child.

25 (b) Except when the financial responsibility of a responsible parent is in the process of being
26 determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must
27 contain a provision concerning the duty of child support.

28 (c) The judgment or order may direct the father to pay the reasonable expenses of the mother's
29 pregnancy and confinement.

30 (4) (a) Support judgments or orders ordinarily must be for periodic payments, which may vary in

1 amount.

2 (b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be
3 ordered in lieu of periodic payments of support.

4 (c) The court may limit the father's liability for past support of the child to the proportion of the
5 expenses already incurred that the court considers just.

6 (5) In determining the amount to be paid by a parent for support of the child and the period during
7 which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant
8 facts, including:

9 (a) the needs of the child, including medical needs;

10 (b) the standard of living and circumstances of the parents;

11 (c) the relative financial means of the parents;

12 (d) the earning ability of the parents;

13 (e) the need and capacity of the child for education, including higher education;

14 (f) the age of the child;

15 (g) the financial resources and the earning ability of the child;

16 (h) the responsibility of the parents for the support of others;

17 (i) the value of services contributed by the custodial parent;

18 (j) the cost of day care for the child; and

19 (k) any custody arrangement that is ordered or decided upon.

20 (6) (a) Whenever a court issues or modifies an order concerning child support, the court shall
21 determine the child support obligation by applying the standards in this section and the uniform child
22 support guidelines adopted by the department of public health and human services pursuant to 40-5-209.
23 The guidelines must be used in all cases, including cases in which the order is entered upon the default of
24 a party and those in which the parties have entered into an agreement regarding the support amount. A
25 verified representation of a defaulting parent's income, based on the best information available, may be
26 used when a parent fails to provide financial information for use in applying the guidelines. The amount
27 determined under the guidelines is presumed to be an adequate and reasonable support award, unless the
28 court finds by clear and convincing evidence that the application of the standards and guidelines is unjust
29 to the child or to any of the parties or is inappropriate in that particular case.

30 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall

1 state its reasons for finding that the application of the standards and guidelines is unjust to the child or a
2 party or is inappropriate in that particular case. Similar reasons must also be stated in a case in which the
3 parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary
4 the guideline amount must include a statement of the amount of support that would have ordinarily been
5 ordered under the guidelines.

6 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for
7 the child's support, the court shall state its reasons for not ordering child support.

8 (d) Child support obligations established under this section are subject to the registration and
9 processing provisions of [sections 1 through 11].

10 (7) The judgment or order, whether temporary or final, concerning child support and each
11 modification of a judgment or order for child support must include a medical support order as defined in
12 40-5-804.

13 (8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in
14 the support order, a support obligation established by judgment, decree, or order under this section,
15 whether temporary or final, and each modification of an existing support obligation made under 40-6-118
16 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part
17 3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent
18 with this section is nevertheless subject to withholding for the payment of support without need for an
19 amendment to the support order or for any further action by the court.

20 (b) If a support order subject to income withholding is expressed in terms of a monthly obligation,
21 the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's
22 regular pay period.

23 (c) If an obligor is excepted from paying support through income withholding, the support order
24 must include as part of the order a requirement that whenever the case is receiving services under Title
25 IV-D of the Social Security Act, support payments must be paid through the department of public health
26 and human services as provided in [section 5].

27 (9) ~~(a) For the purposes of income withholding as provided in subsection (8), whenever~~ If the
28 district court establishes paternity or establishes or modifies a child support obligation, the judgment,
29 decree, or order must include a provision requiring the ~~parent obligated to pay support to inform parties to~~
30 promptly file with the court and, ~~if the department of public health and human services is providing services~~

under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following to update, as necessary, information on:

(i) identity of the party;

(ii) social security number;

(iii) residential and mailing addresses;

(iv) telephone number;

(v) driver's license number;

(vi) the name, and address, and telephone number of the parent's current party's employer; and

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier

or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the party's employer.

(b) The order must further direct that in any subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or the department of public health and human services, if the department is providing services under Title IV-D of the Social Security Act, may consider the due process requirements for notice and service of process to be met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the court.

(10) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of public health and human services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

(11) The social security number of a person subject to a paternity determination under this part must be recorded in the records relating to the matter."

Section 91. Section 40-6-117, MCA, is amended to read:

"40-6-117. Enforcement of judgment or order. (1) If existence of the father and child relationship

1 is declared or paternity or a duty of support has been acknowledged or adjudicated under this part or under
2 prior law, the court may, except as provided in 40-6-116(8) and [section 5], order support payments to be
3 made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer
4 them for the benefit of the child under the supervision of the court.

5 (2) Full faith and credit must be given to a determination of paternity made by any other state,
6 whether presumed by law, established through voluntary acknowledgment, or established by administrative
7 or judicial processes.

8 (3) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All
9 remedies for the enforcement of judgments apply.

10 (4) (a) A district court judgment, decree, or order that establishes or modifies a child support
11 obligation must include a provision requiring the child support obligation to be paid, without need for further
12 order of the court, to:

13 (i) the legal custodian of the minor child;

14 (ii) ~~(A) any other a~~ person, organization, or agency ~~having legal to which the legal custodian~~
15 voluntarily or involuntarily relinquishes actual physical custody of the minor child or collecting child support
16 on behalf of the minor child under a legal assignment of rights; or

17 ~~(B) the court for the benefit of the minor child;~~

18 (iii) any other person, organization, or agency ~~designated as caretaker of the minor child by~~
19 agreement of the legal custodian; or

20 ~~(iv) any assignee or other person, organization, or agency authorized to receive or collect child~~
21 support entitled by law, assignment, or similar reason to receive or collect the child support obligation.

22 (b) If the department of public health and human services is providing services under Title IV-D of
23 the Social Security Act, payment of support must be made through the department for distribution to the
24 person, organization, or agency entitled to the payment.

25 ~~(b)(c)~~ A judgment, decree, or order that omits the provision required by subsection (4)(a) is subject
26 to the requirements of subsection (4)(a) without need for an amendment to the judgment, decree, or order
27 or for any further action by the court."
28

29 **Section 92.** Section 50-15-210, MCA, is amended to read:

30 **"50-15-210. Paternity acknowledgment.** (1) Upon the birth of a child to a mother unmarried at

1 the time of birth, the administrator or person in charge of a hospital or other institution in which the birth
2 occurs or the midwife who attends the birth shall:

3 (a) provide an opportunity for the child's mother and alleged father to complete an acknowledgment
4 of paternity pursuant to 40-6-105;

5 (b) provide written information, furnished by the department of public health and human services,
6 describing the rights and responsibilities of paternity, the benefits of having a child's paternity established,
7 and the child's right to receive support; and

8 (c) forward a copy of an acknowledgment signed by the mother and the father to the department.

9 (2) The hospital, institution, or midwife is entitled to reimbursement for reasonable costs of
10 obtaining an acknowledgment. The department of public health and human services shall establish the
11 amount of reasonable costs, not to exceed the amount for which federal financial participation is available,
12 and the procedures for claiming reimbursement.

13 (3) Hospitals, institutions, and midwives shall use forms prescribed by the department of public
14 health and human services for the acknowledgment of paternity.

15 (4) If the child is born in this state, the department of public health and human services shall file
16 an acknowledgment received under 40-6-105 or this section with the child's certificate of birth. If the child
17 was not born in this state or if an acknowledgment received under 40-6-105 or this section cannot be filed
18 with the child's certificate of birth, the department shall file the acknowledgment in an acknowledgment
19 registry created and maintained for that purpose."
20

21 **Section 93.** Section 50-15-223, MCA, is amended to read:

22 **"50-15-223. Certificates of birth following adoption, legitimation, or determination or**
23 **acknowledgment of paternity.** (1) The department shall establish a new certificate of birth for a person born
24 in this state when the department receives the following:

25 (a) a certificate of adoption, as provided in 50-15-311, a certificate of adoption prepared and filed
26 in accordance with the laws of another state or foreign country, or a certified copy of the decree of
27 adoption, together with the information necessary to identify the original certificate of birth and to establish
28 a new certificate of birth; or

29 (b) a request that a new certificate be established if the request shows that:

30 (i) a district court, court of appropriate jurisdiction in another state, or administrative agency in this

1 state or another state with appropriate jurisdiction has determined the paternity of the person and
2 information necessary to identify the original certificate of birth is provided; or

3 (ii) both parents have acknowledged the paternity of the person and request that the surname be
4 changed from that shown on the original certificate.

5 (2) The date of birth and the city and county of birth must be stated in the newly established
6 certificate of birth. The department shall substitute the new certificate of birth for the original certificate
7 of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court
8 determination of paternity, or paternity acknowledgment may not be subject to inspection, except upon
9 order of a district court, as provided by rule, or as otherwise provided by state law.

10 (3) Upon receipt of a report of an amended decree of adoption, the department shall amend the
11 certificate of birth as provided in rules adopted by the department.

12 (4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the
13 original certificate of birth issued before the adoption to its place in the files and the certificate of birth
14 issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection,
15 except upon order of a district court or as provided by rule adopted by the department.

16 (5) Upon written request of both parents and receipt of a sworn acknowledgment and other
17 credible evidence of paternity signed by both parents of a child born outside of marriage, the department
18 shall reflect the paternity on the child's certificate of birth if paternity is not already shown on the certificate
19 of birth.

20 (6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth
21 is to be established under this section and the date and place of birth have not been determined in the
22 adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with
23 the department, as provided in 50-15-204, before a new certificate of birth may be established. The new
24 certificate of birth must be prepared on a form prescribed by the department.

25 (7) When a new certificate of birth is established by the department, the department may direct
26 that all copies of the original certificate of birth in the custody of any other custodian of vital records in this
27 state either be sealed from inspection or be forwarded to the department for sealing from inspection.

28 (8) (a) The department shall, upon request of the adopting parents, prepare and register a
29 certificate of birth in this state for a person born in a foreign country who is not a citizen of the United
30 States and who was adopted through a district court in this state.

(b) The certificate of birth must be established by the department upon receipt of a certificate of adoption, conforming to the requirements of 50-15-311, from the court that reflects entry of an order of adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or older.

(c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual country of birth. A statement must be included on the certificate indicating that it is not evidence of United States citizenship for the child for whom it is issued.

(d) After registration of the certificate of birth in the new name of the adopted person, the department shall seal and file the certificate of adoption, which is not subject to inspection, except upon order of the district court, as provided by rule, or as otherwise provided by state law.

(9) The department may promulgate rules necessary to implement this section."

Section 94. Section 50-15-403, MCA, is amended to read:

"50-15-403. Preparation and filing of death or fetal death certificate. (1) A person in charge of disposition of a dead body or fetus that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death shall obtain personal data on the deceased, including the deceased's social security number, if any, or, in the case of a fetal death, on the parents that is required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate.

(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician or the coroner having jurisdiction for medical certification of the cause of death. The person in charge of disposition shall obtain the completed certification of the cause of death from the physician or coroner and shall, within the time that the department may by rule prescribe, file the death or fetal death certificate with the local registrar in the registration area where the death occurred."

Section 95. Section 53-2-613, MCA, is amended to read:

"53-2-613. Application for assistance -- assignment of support rights. (1) Applications for public assistance, including but not limited to aid to families with dependent children and medical assistance, must be made to the county department of public welfare in the county in which the person is residing. The

1 application must be submitted in the manner and form prescribed by the department of public health and
2 human services, and must contain information required by the department of public health and human
3 services.

4 (2) A person by signing an application for public assistance assigns to the state, to the department
5 of public health and human services, and to the county welfare department all rights that the applicant may
6 have to support and medical payments from any other person in the applicant's own behalf or in behalf of
7 any other family member for whom application is made.

8 (3) The assignment:

9 (a) is effective for both current and accrued support and medical obligations;

10 (b) takes effect upon a determination that the applicant is eligible for public assistance;

11 (c) remains in effect with respect to the amount of any unpaid support and medical obligation
12 accrued under the assignment that was owed prior to the termination of public assistance to a recipient;
13 and

14 (d) does not apply to support that accrued before the applicant received public assistance.

15 (4) If a person who is the legal custodian and child support obligee under a support order
16 relinquishes physical custody of a child to a caretaker relative without obtaining a modification of legal
17 custody and the caretaker relative is determined eligible for public assistance on behalf of the child, the
18 child support obligation is transferred by operation of law to the caretaker relative and may be assigned as
19 provided in subsection (2). The transfer and assignment terminate when the caretaker relative no longer
20 has physical custody of the child, except for any unpaid support still owing under the assignment at that
21 time.

22 ~~(4)~~(5) Whenever a child support or spousal support obligation is assigned to the department of
23 public health and human services pursuant to this section, the following provisions apply:

24 (a) If the support obligation is based upon a judgment or decree or an order of a court of competent
25 jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse
26 public assistance money expended.

27 (b) A recipient or former recipient of public assistance may not commence or maintain an action
28 to recover or enforce a delinquent support obligation or make any agreements with any other person or
29 agency concerning the support obligation, except as provided in 40-5-202.

30 (c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay

over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department's child support enforcement division has filed a written notice that:

- (i) the assignment of current support amounts has been terminated; and
- (ii) all assigned support delinquencies, if any, are satisfied or released.

(d) A recipient or former recipient of public assistance may not take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department's child support enforcement division is given written notice under the provisions of 40-5-202. Any modifications or agreements entered into without the participation of the department are void with respect to the state, the department, and the county welfare department.

(e) A support obligation assigned under this section may not be terminated, invalidated, waived, set aside, or considered uncollectible by the conduct, misconduct, or failure of a recipient or former recipient of public assistance to take any action or to cease any action required under a decree, judgment, support order, custody order, visitation order, restraining order, or other similar order."

Section 96. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form furnished by the department. A motorcycle endorsement is required for the operation of a quadricycle. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must state the full name, date of birth, sex, ~~and~~ residence address of the applicant, and if the application is for a commercial vehicle operator's license, social security number, must briefly describe the applicant, and must state whether:

- (a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country;
- (b) any commercial operator license has ever been suspended or revoked; or

(c) an application has ever been refused, and, if so, the date of and reason for suspension, revocation, or refusal.

(3) When application is received from an applicant previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction. The driving record may be transmitted manually or by electronic medium. When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance."

Section 97. Section 87-1-102, MCA, is amended to read:

"87-1-102. Penalties. (1) A person who purposely, knowingly, or negligently violates a provision of this title, any other state law pertaining to fish and game, or the orders or rules of the commission or department is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined an amount not less than \$50 or more than \$1,000 or imprisoned in the county jail for not more than 6 months, or both, unless a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of that person's license and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period set by the court. If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.

(2) (a) A person convicted of unlawfully taking, killing, possessing, or transporting a bighorn sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals shall be fined an amount not less than \$500 or more than \$2,000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope,

1 elk, or mountain lion or any part of these animals shall be fined an amount not less than \$300 or more than
2 \$1,000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon
3 conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued
4 by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction
5 or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the
6 department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing,
7 and trapping licenses to the department within 10 days.

8 (c) A person convicted of unlawfully attempting to trap or hunt a game animal shall be fined an
9 amount not less than \$200 or more than \$600 or imprisoned in the county jail for not more than 60 days,
10 or both.

11 (d) A person convicted of purposely, knowingly, or negligently taking, killing, trapping, possessing,
12 transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation
13 of any provision of this title shall be fined an amount not less than \$100 or more than \$1,000, imprisoned
14 in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture
15 of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap in this state for 24
16 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period, and
17 any pelts possessed unlawfully must be confiscated. For each conviction or forfeiture, the department shall
18 notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping
19 licenses to the department within 10 days.

20 (e) A person convicted of hunting, fishing, or trapping while that person's license is forfeited or
21 a privilege is denied shall be imprisoned in the county jail for not less than 5 days or more than 6 months.
22 In addition, that person may be fined an amount not less than \$500 or more than \$2,000.

23 (3) A person convicted or who has forfeited bond or bail under this section and whose license
24 privileges are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or
25 trapping license or permit during the period when license privileges have been forfeited. A person convicted
26 of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping
27 license during the period when license privileges have been forfeited shall be fined an amount not less than
28 \$500 or more than \$2,000, imprisoned in the county jail for not more than 60 days, or both.

29 (4) A person convicted or who has forfeited bond or bail under this section and who has been
30 ordered to pay restitution under the provisions of 87-1-111 may not apply for any special license under Title

1 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following
2 the date of conviction or restoration of license privileges, whichever is later. If the violation involved the
3 unlawful taking of a moose, a bighorn sheep, or a mountain goat, the person may not apply for a special
4 license or enter a drawing for a special license or permit for the same species of game animal that was
5 unlawfully taken for an additional period of 5 years following the ending date of the first 5-year period. A
6 person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or
7 unlawfully entering a drawing for a special license or permit shall be fined an amount not less than \$500
8 or more than \$2,000, imprisoned in the county jail for not more than 60 days, or both.

9 (5) Notwithstanding the provision of subsection (1), the penalties provided by this section are in
10 addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2.

11 (6) If an administrative authority suspends a license, permit, or privilege to obtain a license or
12 permit issued under this title, the department shall notify the person of the suspension and the person shall
13 surrender the license or permit to the department within 10 days."
14

15 **Section 98.** Section 87-2-106, MCA, is amended to read:

16 **"87-2-106. Application for license -- penalties for violation -- forfeiture of privileges.** (1) A license
17 may be procured from the director, any warden, or any authorized agent of the director. The applicant shall
18 state the applicant's name, social security number, age, occupation, address of permanent residence, and
19 post-office address, the applicant's qualifying length of time as a resident in the state of Montana, whether
20 a citizen of the United States or an alien, and other facts, data, or descriptions as may be required by the
21 department. An applicant for a resident license shall present a valid Montana driver's license, Montana
22 driver's examiner's identification card, or other identification specified by the department to substantiate
23 the required information. It is the applicant's burden to provide documentation establishing the applicant's
24 identity and qualifications to purchase a license. It is unlawful and a misdemeanor for a license agent to sell
25 a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the
26 time of application for licensure. Except as provided in subsections (2) through (4), the statements made
27 by the applicant must be subscribed to before the officer or agent issuing the license.

28 (2) Except as provided in subsection (3), department employees or officers may issue licenses by
29 mail. Statements on an application for a license to be issued by mail need not be subscribed to before the
30 employee or officer.

1 (3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the
2 director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the
3 requirements of 87-2-102(7). The director shall process the application in an expedient manner.

4 (4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing
5 license for the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the
6 license.

7 (5) A license is void unless subscribed to by the licensee and by an employee or officer of the
8 department or by a license agent or an authorized representative of the license agent.

9 (6) It is unlawful to subscribe to any statement, on any application or license, that is materially
10 false. Any material false statement contained in an application renders the license issued pursuant to it void.
11 A person violating any provision of this subsection is guilty of a misdemeanor.

12 (7) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of
13 affirming to a false statement to obtain a resident license shall be:

14 (i) fined not less than the greater of \$100 or twice the cost of the nonresident license that
15 authorized the sought-after privilege or more than \$1,000;

16 (ii) imprisoned in the county jail for not more than 6 months; or

17 (iii) both fined and imprisoned.

18 (b) In addition to the penalties specified in subsection (7)(a), upon conviction or forfeiture of bond
19 or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt,
20 fish, and trap in Montana for not less than 18 months.

21 (8) It is unlawful and a misdemeanor for a person to purposely or knowingly assist an unqualified
22 applicant in obtaining a resident license in violation of this section."
23

24 **Section 99.** Section 87-2-202, MCA, is amended to read:

25 "**87-2-202. Application -- stamp attachment -- fee -- expiration.** (1) A wildlife conservation license
26 must be sold upon written application. The application must contain the applicant's name, social security
27 number, age, occupation, place of residence, post-office address, and the qualifying length of time as a
28 resident in the state of Montana; state whether the applicant is a citizen of the United States or an alien;
29 and be subscribed by the applicant. The applicant shall present a valid Montana driver's license, a Montana
30 driver's examiner's identification card, or other identification specified by the department to substantiate

1 the required information when applying for a wildlife conservation license. It is the applicant's burden to
2 provide documentation establishing the applicant's identity and qualifications to purchase a wildlife
3 conservation license. It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation
4 license to an applicant who fails to produce the required identification at the time of application for
5 licensure.

6 (2) Hunting, fishing, or trapping licenses in the form of tags or stamps issued to a holder of a
7 wildlife conservation license must be affixed to or recorded on the wildlife conservation license according
8 to rules the department may prescribe.

9 (3) (a) Resident wildlife conservation licenses may be purchased for a fee of \$4.

10 (b) Nonresident wildlife conservation licenses may be purchased for a fee of \$5.

11 (4) Licenses issued are void after the last day of February next succeeding their issuance."
12

13 **NEW SECTION. Section 100. Codification instruction.** (1) [Sections 1 through 11] are intended
14 to be codified as an integral part of Title 40, chapter 5, and the provisions of Title 40, chapter 5, apply to
15 [sections 1 through 11].

16 (2) [Section 12] is intended to be codified as an integral part of Title 40, chapter 5, part 2, and the
17 provisions of Title 40, chapter 5, part 2, apply to [section 12].

18 (3) [Section 13] is intended to be codified as an integral part of Title 40, chapter 5, part 1, and the
19 provisions of Title 40, chapter 5, part 1, apply to [section 13].

20 (4) [Section 14] is intended to be codified as an integral part of Title 19, chapter 2, part 9, and the
21 provisions of Title 19, chapter 2, apply to [section 14].

22 (5) [Section 15] is intended to be codified as an integral part of Title 19, chapter 20, part 3, and
23 the provisions of Title 19, chapter 20, apply to [section 15].
24

25 **NEW SECTION. Section 101. Severability.** If a part of [this act] is invalid, all valid parts that are
26 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
27 applications, the part remains in effect in all valid applications that are severable from the invalid
28 applications.
29

30 **NEW SECTION. Section 102. Two-thirds vote required.** Because 40-5-206 limits governmental

1 liability by including a provision that a public entity that discloses certain information is not liable for
2 negligent disclosure, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the
3 members of each house of the legislature for passage of that provision. If the required vote is not obtained,
4 the bracketed phrase contained in 40-5-206 is void.

5
6 **NEW SECTION. Section 103. Retroactive applicability.** [Section 1(6)(b)] applies retroactively,
7 within the meaning of 1-2-109, to orders issued after January 1, 1994.

8
9 **NEW SECTION. Section 104. Effective dates.** (1) Except as provided in subsections (2) and (3),
10 [this act] is effective July 1, 1997.

11 (2) [Sections 1, 9, 10, and 13] are effective October 1, 1997.

12 (3) [Sections 2 through 8] are effective October 1, 1998.

13 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0374, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act implementing the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996; instituting automated, mass case processing techniques for child support, including a central case registry, a centralized unit for tracking and disbursing child support collections, and a directory of new hires; restructuring existing child support procedures by including revised income-withholding procedures, revised paternity establishment processes, availability of social security numbers, expanded access to public and private sources of information for locate purposes, availability of other automated locate sources, work requirements for parents owing support, enhanced interstate enforcement procedures to include recreational licenses; providing that administrative orders have full force and effect without filing them with district court; revising administrative registration procedures; and generally revising the Uniform Interstate Family Support Act to make changes required by the federal act.

ASSUMPTIONS:

1. Each new FTE will incur annual operational expenses of \$9,461, and first year equipment costs of \$4,021.

Day Income Withholding

2. Child Support Enforcement Division (CSED) will be required to issue an order to withhold income (OTW) two days after receiving notice that a CSED obligor has become employed.
3. Based on the past 5 years, there will be 2,275 new divorce cases per year in Montana involving children. The CSED will receive 55% or 1,251 cases requiring OTWs in addition to the 14,400 OTWs to be issued on the existing caseload per year.
4. At 20 minutes per OTW, there are 5,165 hours of work needed to issue new OTWs per year.
5. At 2,088 work hours per year, 2.00 FTE (grade 13) would be needed to process OTWs to meet the two day turnaround at a cost of \$42,857 (\$21,428.50*2).
6. Operational and equipment costs for these two FTE for 9 months of fiscal 1999 would be \$22,234 (\$9,461*.75 + \$4,021)*2.
7. CSED receives 66% federal match and 34% state special revenue fund for these child support issuances.

W-4 New Hire Reporting

8. CSED will be required to operate a State Directory of New Hires (SDNH). All employers must report W-4 information to the SDNH within 20 days of the hire or rehire date.
9. Based on other states average of 12 new hires per employer, Montana's approximately 35,000 employers are estimated to generate 414,552 new hires or rehires per year.
10. At one minute per entry, there would be 6,909 hours of data entry needed to enter information onto the SDNH.
11. At 2,088 hours per FTE per year, 3.00 FTE data entry, grade 8, would be needed to meet the new hire reporting requirements for fiscal 1998 at \$41,220 (\$18,320*3)*.75, and for fiscal 1999 at \$54,960 (\$18,320*3).
12. Employer compliance monitoring for 35,000 employers will require 1.00 FTE (grade 13) for fiscal 1998 at \$21,428 (\$28,571*.75), and for fiscal 1999 at \$28,571.
13. Operational and equipment for these FTE for 9 months of fiscal 1998 would cost \$44,467. (\$9,461*.75 + \$4,021)*4. Operational for fiscal 1999 would cost \$37,844. (\$9,461*4).
14. Printing costs for new W-4 forms and instructions at \$.25 a copy for 35,000 employers twice a year is \$17,500.
15. Mailing costs of employer packets at \$.296 twice a year is \$20,720.
16. Training costs for installing and operating new hire reporting systems/procedures at 125 miles per week at \$.30 per mile for 50 weeks is \$1,875.
17. The matching rate is 66% federal and 34% state special revenue fund.

(Continued)

Dave Lewis 2-20-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Don Hargrove 2/20/97
DON HARGROVE, PRIMARY SPONSOR DATE

Fiscal Note for SB0374, as introduced

SB 374

18. Revenue of \$57,661 for fiscal 1998 at 27.83% state share, and \$112,633 for fiscal 1999 at 26.88% state share would be generated from a collection increase of \$1,287,000 per year. SEARCHS reports it takes 62 days on average to issue an order. New requirements are a maximum of 22 days (20 days for employer to return W-4 data, and 2 days for the CSED to issue the income withholding order), a gain of 40 days or 11% (40/365) faster. Based on \$11,700,000 fiscal 1996 in-state income withholding collections, an 11% increase would be \$1,287,000.

Central Support Registry

19. CSED is required to operate a State Central Support Registry of all Title IV-D child support orders and all non-IV-D child support orders issued or modified in the state after January 1, 1994.
20. At 4,096 old non-IV-D cases, and 1,024 new non-IV-D cases annually to be entered onto the new system at two cases and \$13.68 per hour is \$35,021 for the first year and \$7,004 per year for subsequent years. The catch-up entry team cost will occur entirely in fiscal 1999, even though only 9 months of other expenses are shown as costs.
21. Toll-free telephone costs would increase \$2,839 for 9 months of fiscal 1999. (\$3,785 * .75)
22. CSED would need \$20,000 for counties for updated computers, modems, and phone lines to upload child support order information onto the Central Registry. Also, \$2,800 for a server, and \$3,000 for software.
23. Travel costs for the catch-up entry team would be \$3,630 for 22 days of travel for 6 people. This is based on six people inputting 4 cases per hour, for 22 days to handle the old non-IV-D caseload of 4,096. The amount includes travel per diem of \$27.50 per person.
24. One systems coordinator, grade 15, will be needed to coordinate and monitor the new Central Support Registry and interfaces. The cost for 9 months of fiscal 1999 would be \$28,411.
25. Operational and equipment for 9 months of fiscal 1999 would cost \$11,117 (\$9,461 * .75 + \$4,021).

Central Income Withholding Collection

26. All income withholding collections are required to be cashiered at one statewide site.
27. The anticipated staff needed to handle 2,275 new income withholding cases plus 9,074 estimated income withholding cases (estimated to generate 7,378 checks per month, assuming a 50% payor rate, and 1.3 checks per payor, with 45% being non-IV-D) will be 2.00 FTE, grade 8, totaling \$27,480. Operational and equipment costs for 9 months of fiscal 1999 would be \$22,234 [(\$9,461 * .75 + \$4,021) * 2].
28. The customer service impact is based on the cost of \$690,000 per year for the unit for 43,000 cases (690,000/43,000=\$16 CSU cost per case). An increase of 5,120 new non-IV-D income withholding cases which would have collections questions would cost \$73,728 (\$16 * .75 * 6,144 non-IV-D cases) for 9 months of fiscal 1999.
29. Printing costs of mailers for approximately 35,000 Montana employers at \$.25 is \$8,750.
30. Mass mailings to 35,000 employers at \$.296 each would cost \$10,360 per year.
31. Phone costs for the toll-free telephone number would increase proportionate to the number of cases that could have CSED processing income withholding payments for 9 months of fiscal 1999, or \$15,799, (\$144,000 fiscal 1996 cost of toll-free telephone * 15%).

Financial Institutions/Utilities Interfaces

32. CSED will be charged access fees for electronic interfaces with banks, investment companies, utilities, and cable TV.
33. Revenue of \$19,355 for fiscal 1998 at 27.83% state share, and \$18,903 for fiscal 1999 at 26.88% state share would be generated if three times as many collections (\$72,000 * 3 = \$216,000) were made by writs issued because of the new interfaces. CSED currently averages 360 writs per year at an average of \$200 per writ, or \$72,000 in writ collections per year.

(Continued)

FISCAL IMPACT:

Expenditures:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
FTE	4.00	9.00
Personal Services	\$ 62,648	\$182,278
Operating Expenses	93,478	288,544
Equipment	<u>16,084</u>	<u>45,905</u>
Total	\$172,210	\$516,726

Funding:

General Fund (01)	\$ 0	\$ 44,150
State Special Revenue (02)	58,551	131,536
Federal Special Revenue (03)	<u>113,659</u>	<u>341,040</u>
Total	\$172,210	\$516,726

Revenues:

State Special Revenue (02)	\$ 77,016	\$131,536
County Fund	3,781	6,613
Federal Special Revenue (03)	<u>108,292</u>	<u>192,510</u>
Total	\$189,089	\$330,659

Net Impact on Fund Balance: (Revenues minus Expenditures)

General Fund (01)	\$ 0	(\$44,150)
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

This bill will generate \$6,613 per year for non-assumed counties from increased CSED collections, once all provisions are fully implemented.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Although long-range statewide financial impacts are inestimable, the CSED expects more locate successes due to access to centralized data bases, and a quicker turnaround of payments to the family due to expedited time lines.

While there is a recognizable fiscal impact due to start up costs of these programs, the fiscal impact of not enacting the federal requirements is greater. The federal government would withdraw funding for the CSED and state welfare programs in an amount that will exceed \$45 million.

SENATE JUDICIARY

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ							
SB0289	2/06	2/11		PASS AS AMENDED	VOTE:10-0	2-13	2/14
SB0291	BROOKE, VIVIAN		ADD SEXUAL ORIENTATION TO MALICIOUS HARASSMENT LAWS				
	2/06	2/14		TABLED ON 02/19	VOTE: 7-3		
SB0303	WILSON, WILLIAM		ALLOW JUDGE TO REQUIRE CERTAIN OFFENDERS TO HAVE IGNITION INTERLOCK DEVICE				
	2/07	2/11		PASS AS AMENDED	VOTE: 8-2	2-18	2/18
SB0314	CRIPPEN, BRUCE		REVISE VENUE				
	2/08	2/13		DO PASS	VOTE:6-4	2-17	2/18
SB0318	BECK, TOM		DISALLOW ORAL EVIDENCE ON EQUITABLE ESTOPPEL DEFENSE RE: WRITTEN CONTRACT				
	2/08	2/13		TABLED ON 02/17	VOTE:9-1		
SB0321	HALLIGAN, MIKE		PROVIDE FOR A MOBILE HOME COURT MEDIATOR				
	2/11	2/14		PASS AS AMENDED	VOTE:7-3	2-17	2/18
SB0327	DOHERTY, STEVE		CREATE OFFENSE OF ELECTIONEERING BY PHONE ON ELECTION DAY				
	2/11	2/14		PASS AS AMENDED	VOTE:8-2	2-17	2/18
SB0329	HALLIGAN, MIKE		REVISE LAWS GOVERNING BUSINESS ENTITIES				
	2/11	2/14		PASS AS AMENDED	VOTE:10-0	2-14	2/14
SB0341	STANG, BARRY		FELONY PARTNER OR FAMILY MEMBER ASSAULT				
	2/12	2/17		DO PASS	VOTE:10-0	2-17	2/18
SB0368	LYNCH, J. D.		REGULATE SALE AND IMPORTATION OF VIDEO GAMBLING MACHINES				
	2/13	2/18		PASS AS AMENDED	VOTE: 10-0	2-18	2/18
SB0369	SWYSGOOD, CHARLES		ENDANGERING WELFARE OF CHILDREN INCL. CONTACTING CHILD AG. PARENTS' WISHES				
	2/15	2/18		DO PASS	VOTE:10-0	2-19	2/19
SB0374	HARGROVE, DON		REVISE CHILD SUPPORT LAWS TO COMPLY WITH FEDERAL REQUIREMENTS AND LAW				
	2/17	2/20		PASS AS AMENDED	VOTE:7-3	2-21 FINANCE & CLAIMS	2/22
	HARP, JOHN		GENERALLY REVISE PRIVATE SECURITIES LITIGATION LAWS				

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on February 20, 1997, at 10:00 A.M., in Senate Judiciary Room, Room 325.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 321, 2/17
HB 215, 2/17
SB 374, 2/17
HB 239, 2/17

Executive Action: SB 96, HB 215, HB 321, HB 239

EXECUTIVE ACTION ON SB 96

Motion: SEN. LORENTS GROSFIELD MOVED SB 96 BE TAKEN OFF THE TABLE.

Discussion: SEN. GROSFIELD commented that a number of people who are interested in the issue have come forth and indicated that a voluntary system would be acceptable to them. They have worked on amendments. He explained that a letter had been provided to the committee. **EXHIBIT 1** The Attorney General sent this letter to people in and out of the industry which outlined a voluntary approach.

Motion/Vote: The MOTION FAILED with SEN. SHARON ESTRADA, STEVE DOHERTY, AL BISHOP, REINY JABS and RIC HOLDEN voting no.

HEARING ON SB 374

Sponsor: SEN. DON HARGROVE, SD 16, Bozeman

Proponents: Mary Ann Wellbank, Administrator, Child Support Enforcement Division, Department of Public Health and Human Services,
Hank Hudson, Child and Family Services Division, Dept. of Public Health and Human Services
Maurine Shaunessey, citizen

Opponents: None

Opening Statement by Sponsor:

{Tape: 1; Side: a; Approx. Time Count: 8:37; Comments: .}

SEN. DON HARGROVE, SD 16, Bozeman, introduced SB 374. This bill includes federal mandates. The hammer can be our entire AFDC of approximately \$40 million. This bill would be twice as long if Montana had not taken a pro-active stance and already implemented many of the federal requirements. The Department has tried to trim the bill. This is the "deadbeat dad" bill. This completes setting up a database to make sure people face their responsibilities. The aid to family with dependent children has been changed by the federal government. It is now called Temporary Assistance for Needy Families. This bill will require registering people when they get a job. The state will be able to garnish retirement wages as well as regular wages. Professional and recreational licenses are included. The fiscal note gives you a good idea of the program.

Proponents' Testimony:

{Tape: 1; Side: a; Approx. Time Count: 8:45; Comments: .}

Mary Ann Wellbank, Administrator, Child Support Enforcement Division, Department of Public Health and Human Services, presented her written testimony on SB 374. EXHIBIT 2

{Tape: 1; Side: b; Approx. Time Count: 9:24; Comments: .}

Hank Hudson, Child and Family Services Division, Department of Public Health and Human Services, commented that the success of welfare reform in Montana is contingent on Child Support Enforcement.

Maurine Shaunessey, citizen, stated she has two boys who are 13 and 15. She has raised them herself for the last 13 years. Although there is a court order saying their father should pay child support, they are still not getting support from their

father. He has worked in other states. He gets into and out of a job faster than they can track him down. He makes good money. She wanted to address the new hire section of the bill. She is self-employed, small business owner. She occasionally has employees. For any employee, she fills out a W-4 and other paperwork on a regular basis. Filling out one more form to report each new employee within 20 days of hiring them will help a lot of children in the state. **EXHIBIT 3**

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: b; Approx. Time Count: 9:28; Comments: .}

SEN. MIKE HALLIGAN asked **Ms. Wellbank** to explain the IV-D cases.

Ms. Wellbank explained that IV-D is the title of the Social Security Act which sets forth the funding and authorization for their program. They are required to handle all cases where there is an AFDC, or now TANF, recipient. Everyone on welfare where the ex-spouse or parent is out of the home is automatically referred to them. The parent should pay support before the state gives welfare payments. The other cases in the IV-D program are people who are not on AFDC and who apply for their services. They have 44,000 cases in Montana and over half are not on AFDC. There are a lot of people who are non-IV-D. This bill will require district courts, when they issue court orders, to have certain language saying that if this is subject to income withholding, all the payments need to go through the Child Support Enforcement Division. The non-IV-D cases are also affected when the district court or the Division issues an order, a brief summary of that order must be filed with the Division.

SEN. HALLIGAN asked **Ms. Wellbank** who would enforce the penalty on the new hire issue?

Ms. Wellbank stated they would have an administrative hearing. If the employer is not withholding as ordered, they can currently hold an administrative hearing and find the employer in contempt. This would extend to the new hire responsibility.

SEN. HALLIGAN asked **Ms. Wellbank** how Section 1 would work relating to financial institutions?

Ms. Wellbank stated that right now the Division has the authority to issue writs and liens against assets. When they identify a bank account, they tell the bank what needs to be withheld and sent to them. This bill would be more proactive. If they have a case and a parent is delinquent, they will have created a listing of the delinquencies, the listing will be sent to a bank for a data match. The bank will run the listing and inform the Division. They are not allowed to mention this to the obligated parent. They will then send the bank a writ to collect the

money. The information is handled confidentially and the bank is protected from liability by sharing their information with the Division. The bank lobbyists felt the smaller banks would not have the capability of running the Division's data match against theirs due to the size of the Division's data match. The lobbyists suggested that they allow the bank to be able to send their records to the Division and have them run the data match.

SEN. HALLIGAN stated that sections 13 through 17 indicated that they would be going after retirements. What else would they be going after?

Ms. Wellbank stated that under current law, if they are on welfare, they cannot enforce the support order. If the delinquent party is receiving workers' compensation, unemployment, Social Security disability, or Veteran's benefits, they can collect that money. This bill expands to include both public and private retirement benefits.

SEN. HALLIGAN asked her to describe the process where the child had out-of-home placement.

Ms. Wellbank stated they have a provision in current law where the Division follows the child. If a parent is paying a support order and the child goes to a grandparent, without modifying the order, the Division has the same authority. SB 110 will allow them to establish an order in IV-E cases.

SEN. GROSFIELD asked if the federal requirements in the bill were minimum requirements or if they had added language to them?

Ms. Wellbank clarified that the Division's provisions were minimal. The only controversial Division introduced section is the requirement for Social Security numbers on hunting licenses. They worked with Fish, Wildlife and Parks and both parties felt this would work quite well. Employer reporting is very sensitive. They have strictly adhered to the provisions in the federal law. There are mandatory requirements for the employer to report which include the Social Security number, name, address, and all W-4 information. They also have a provision which states that the employer may report medical insurance.

SEN. GROSFIELD asked if the 20 day requirement was in federal law.

Ms. Wellbank confirmed that it was.

SEN. GROSFIELD stated that there was liability on the employer's part regarding withholding orders from other states.

Ms. Wellbank stated that in 1993 they did not put that into the bill. They prefer having the states send the order to the Division and have the Division collect under a Montana order.

They will notify employers that they have hired an employer representative to deal with these types of issues.

SEN. GROSFIELD asked how much federal money the state would be losing if we did not comply with these federal mandates?

Ms. Wellbank stated the letter she received from the federal Department of Health and Human Services, **EXHIBIT 4**, explained that when a state failed to comply, its plan would be subject to disapproval by the Office of Child Support Enforcement. There would then be no authority to expend federal funds under Title IV-D of the Act for the operation of the state's Child Support Enforcement Program. For them that would mean \$12 million over the biennium. If a state IV-D plan is disapproved, this will result in immediate suspension of all federal payments for the Child Support Enforcement Program and they will be continued to be withheld until the state IV-D Plan can be approved by OCSC. In order to be eligible for a block grant for temporary assistance for needy families, a certain section of the act requires the state to certify that it will operate a child support enforcement program under the state plan approved in IV-D, therefore TANIF funding would also be jeopardized if the state failed to enact the required child support legislation on a timely basis. They can apply for an exemption from the law, but the criteria is very strict. If you already have a law which is similar and works well, you can submit a plea. The only area which might work for this would be the direct withholding. Montana has a very good administrative process which already works.

SEN. GROSFIELD suggested this bill be declared a revenue bill.

CHAIRMAN CRIPPEN stated they would look into that possibility.

SEN. DOHERTY asked **Ms. Wellbank** to provide the committee with the sections which are required by the federal act and the sections which would not be required by the federal act. He also asked if this bill would help child support with self-employed individuals.

Ms. Wellbank felt that the bank, utility, and recreational license suspension interfacing would be the key areas.

SEN. DOHERTY questioned the wording "any other entities maintaining customer databases." He doesn't know any business which doesn't maintain a customer database.

Ms. Wellbank stated they would not be required to submit their databases. The Division would submit their database to the business.

Closing by Sponsor:

{Tape: 1; Side: b; Approx. Time Count: 9:52; Comments: .}

SEN. HARGROVE stated most of this bill is already in place. This deals with getting tough on welfare. We need to force the system to work.

HEARING ON HB 239

Sponsor: REP. JOE TROPILA, HD 47, Great Falls

Proponents: None

Opponents: None

Opening Statement by Sponsor:

{Tape: 2; Side: a; Approx. Time Count: 9:58; Comments: .}

REP. JOE TROPILA, HD 47, Great Falls, introduced HB 239 by request of the Secretary of State. This bill is a housekeeping matter. The only thing it adds is not allowing a notary to notarize his own signature. This is a common practice and has never been in statute.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. TROPILA closed on HB 239. He asked SEN. DOHERTY to carry the bill in the Senate if it was passed out of committee.

EXECUTIVE ACTION ON

Motion/Vote: SEN. GROSFIELD MOVED HB 239 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HB 321

Sponsor: REP. LINDA MCCULLOCH, HD 70, Missoula

Proponents: Scott Resevett, Valley Process Service
Dean Crow, Valley Process Service
Earl Rowe

Opponents: None

Opening Statement by Sponsor:

{Tape: 2; Side: a; Approx. Time Count: 10:04; Comments: .}

REP. LINDA MCCULLOCH, HD 70, Missoula, introduced HB 321 which is an act making it an offense to obstruct a person serving process.

distance ahead of the handler. The element of surprise is with the aggressor and that puts the dog at great risk.

Ralph DeKunso, Lewis and Clark Search and Rescue, stated they are volunteers who purchase, train and maintain their dogs at their own expense. They operate under the sheriff or peace officer. Their dogs can find drowning victims and folks who are buried in avalanches.

Mike Batista, Department of Justice, commented that this bill would also cover the arson dog in the State Fire Marshall's Office. This dog detects accelerants at fire scenes. Last year the dog worked 70 fires, half of them were arson cases. The dog may be harmed by a suspect.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. ORR closed on HB 215.

EXECUTIVE ACTION ON SB 215

MOTION/VOTE: SEN. ESTRADA MOVED TO CONCUR IN HB 215. THE MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 374

Discussion: SEN. DOHERTY stated that doctors and lawyers would have difficulty giving out information.

Amy Pyfer, Legal Counsel for Child Support Enforcement Division, explained that the automated data matches only applied to financial institutions. Section 44 amends 40-5-206 and under existing law that would include state, local, and county governments having to provide information. Federal law included the language "other entities maintaining customer databases." Section 44 would allow them to ask for the information.

SEN. DOHERTY asked how the new hire would work regarding temporary employees?

Ms. Wellbank explained the employer would be the temporary personnel service. The employer who fills out a W-4 is required to meet the new hire reporting.

SEN. DOHERTY asked how this related to tribal courts?

Ms. Wellbank stated the bill does not impact that area. They can currently enforce tribal orders as long as the assets are off the reservation.

SEN. HOLDEN, referring to page 27, asked what the legal custody language encompassed?

Ms. Wellbank explained that this allows child support to follow the child.

SEN. HOLDEN, referred to page 61, line 16, and asked for explanation of same.

Ms. Wellbank stated this would clarify that there could not be a paternity trial on blood testing cases. The federal act states this must be enacted even if it requires a constitutional change. Paternity and DNA is so acceptable that they do not want people to sway the jury by non-related matters such as how many people the woman had sexual relations with.

SEN. HOLDEN asked **Ms. Wellbank** to explain what they want to accomplish with recreational licenses?

Ms. Wellbank explained that they would have the authority to suspend the licenses which would go into a drawing. A biologist counts the herds to determine how many licenses can be issued and then there is a drawing. A license suspended after the drawing would mean that one less Montanan would have access to the drawing. These people will be identified one year in advance. If the delinquent parent had not made some arrangements to become current, his ability to enter into the drawing would be suspended.

{Tape: 2; Side: b; Approx. Time Count: 10:30; Comments: .}

SEN. HOLDEN asked for clarification of line 18, page 106 regarding social security numbers?

Ms. Wellbank stated this is the one controversial area which is not a mandatory requirement. They want social security numbers on applications for fishing and hunting licenses. This makes it easier for them to trace these people. They already request the drivers license which in most cases is a social security number.

SEN. GROSFIELD asked how the new hire would cover part-time help?

Ms. Wellbank clarified that anyone who is required to fill out a W-4 also meets this requirement.

SEN. HALLIGAN felt the new hire information might be handled on a 30 day basis to conform with other reporting deadlines.

Ms. Wellbank stated the 20-day requirement is spelled out in federal law.

SEN. HALLIGAN asked who paid for paternity tests if the alleged father is indigent?

Ms. Wellbank stated that the Department would pay. If there is a 95% possibility of paternity and the district court orders a second paternity test, it says he has to pay in advance for that test. This is about \$300.

SEN. HALLIGAN asked who would be getting immunity?

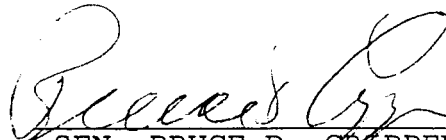
Ms. Pyfer explained there is immunity for everyone reporting information. This section deals with state government agency immunity. A two-thirds vote is necessary to provide government agencies immunity. There would still be immunity for everyone else.

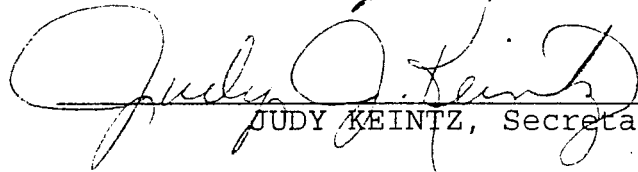
SEN. GROSFIELD asked if there are other administrative proceedings where we say that an administrative order is as good as a district court order.

Ms. Wellbank believes the Department of Labor's orders are final.

ADJOURNMENT

Adjournment: The meeting adjourned at 10:50 a.m.


SEN. BRUCE D. CRIPPEN, Chairman


JUDY KEINTZ, Secretary

BDC/JJK

*Sections required -
Sections NOT -*

SENATE JUDICIARY COMMITTEE

COMMITTEE NO. 1

DATE 2/20/97

FILE NO. SB 374

SB 374

**Senate Judiciary Committee
Thursday, February 20, 1997
Child Support Federal Welfare Reform Bill
To Comply with Requirements of
Personal Responsibility and Work Opportunity Reconciliation Act of 1996**

**Testimony of Mary Ann Wellbank, Administrator
Child Support Enforcement Division, Department of Public Health and Human Services**

Thank you Senator Hargrove. Mr. Chair, Members of the Committee, my name is Mary Ann Wellbank. I am the administrator of the Child Support Enforcement Division.

Senate Bill 374 is the result of legislation enacted by Congress and Signed into law by President Clinton on August 22, 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 or PROWRA. As Senator Hargrove mentioned, this legislation is federally driven with substantial penalties for non-compliance.

The key change in the nation's welfare system is that benefits are now "temporary" or "time limited." Families can no longer depend on government to provide long term assistance, and the original purpose of welfare as a "safety net" is restored. Parents on welfare now need to take proactive steps to become self-sufficient.

While child support is not a cure-all, the role of child support has become much more crucial than ever to families in making the transition from welfare dependency to self-sufficiency. Regular child support, coupled with even a low paying job, can often make a big difference to families in poverty. An essential element of welfare reform is a strong, national child support enforcement system and that is what Congress envisioned with the federal welfare reform act. Contained in the federal welfare reform act are sweeping revisions to the nation's child support enforcement system that emphasize proactive enforcement of parental responsibility and mass case processing through use of automation and technology.

Senator Hargrove mentioned I sent a letter to all legislators and candidates last September describing how these federally required changes will impact Montana's child support enforcement system. In developing this legislation, we very proactively notified and solicited input from both the private and the public sector, as well as the judiciary, to ensure that our legislation would work for Montana. My staff and I took every opportunity to "spread the word" so that this legislation does not catch anyone by surprise.

The child support provisions of the welfare reform bill are sweeping, but they were also non-controversial and widely supported by both parties. While Clinton vowed to change some of the

provisions of the bill concerning eligibility for welfare benefits, the child support provisions are expected to remain entirely intact.

I am here today to summarize the main provisions of this legislation.

The Child Support Enforcement Division has had legislation before this Committee before, and I know you are probably familiar with the program, so I will not go into a detailed background. The main thing you need to keep in mind is that the state child support enforcement program is authorized and funded under Title IV-D of the Social Security Act - that's roman numeral IV-D. Every state that has a welfare program, i.e., AFDC or now, TANF, is required to have a IV-D or child support enforcement program that complies with the federal requirements.

IV-D cases are handled by the state child support enforcement division. These include cases in which a parent who is not on welfare applies for state services as well as cases referred to the division as a condition of receiving public assistance benefits under the former AFDC program and current TANF program. It is important to recognize that the CSED only handles IV-D cases, and there are a number of support orders in Montana which have not been established or are not being enforced by the state IV-D program - i.e. CSED. These are called Non-IV-D cases.

The federally mandated legislation strengthens IV-D requirements, but also sets forth some minimal requirements affecting non-IV-D cases. I will discuss these as I go through the legislation.

Section by Section Analysis

First, you will note the legislative intent, which is necessary for rulemaking purposes. We tried to write the legislation very specifically to avoid concerns about a department's rulemaking authority, but we do believe rules may be necessary to set forth procedural requirements to create the systems contemplated in this legislation. We wanted to assure you that we recognize our responsibility to weigh the need for information against the personal intrusiveness of requesting that information.

Sections 1- 8 of SB 374 relate to a "Central Case Registry and Payment Processing Unit. These sections apply to both IV-D and non IV-D cases, and establish two automated systems.

The first is an automated central registry of child support orders. The registry must include a summary of all child support orders receiving IV-D services as well as all child support orders entered or modified in Montana after October 1, 1998. The registry must also include a registry of all child support liens. Right now, CSED maintains a registry of all orders it issues or enforces (whether issued by district courts or CSED), but there is no central registry of *non-IV-D* orders which are maintained by our 56 different counties. This consolidation of records pertaining to orders and liens will facilitate "one-stop shopping" by courts, parents and other states' IV-D agencies who need to access child support records for enforcement and modification purposes. Certain information contained in the registry, such as social security numbers, employment

information pertaining to individuals, is considered confidential.

The second system is an automated payment processing system which receives, distributes and maintains records of payments made through income withholding. The CSED currently has such a system in place for all IV-D cases - cases using our services. The legislation requires the CSED to expand this system to include processing of non-IV-D income withholding payments. This will help employers because they will be able to send all their child support withholdings in one envelope or through one electronic transmission to one address. The CSED will maintain the single, centralized "official" record of all payments made through income withholding that can be relied upon as a true, and accurate record of payments.

Sections 9 ties in with the previous sections to create a state directory of new hires. Employers are required to report new hires to the CSED within 20 days of hiring. The report must include, the employee's name, date of hire, social security number and residential and mailing addresses, as well as the name address and federal identification number of the employer. This information is currently already collected on W-4 forms which each new employee must complete when hired. Employers can transmit this information, and other optional information, either in hard copy, facsimile, or electronic transmission. Employers may deduct \$5.00 from an employee's wages to cover the cost of reporting.

I wanted to take a few minutes to discuss new hire reporting, since this is an issue that has faced the Montana legislature before. To me, this is the single most important child support legislation that Montana is missing. Right now, the CSED gets information from the Department of Labor by interfacing with the quarterly reports employers are required to provide. Unfortunately, these reports are due at the end of every quarter and contain information anywhere from 90 - 120 days old. By the time the CSED gets the information, we may have missed three to six months of wage withholding - and child support for a family - if the employee is still employed. If, however, the employee has already moved to a different job, the process begins anew. Often, employees leave jobs before income withholding can be initiated. The new hire reporting allows the CSED to identify new employers as soon as an employee changes jobs to ensure continued, regular support to the family. Twenty-six states already have some form of new hire reporting in place, and have found it to be extremely successful over the years. The provisions contained in SB 374 adhere to the minimum federal requirements so as not to place an undue burden on Montana employers, and will be no greater than those enacted by other states. This will guarantee an equal playing field for Montana employers.

The information contained in the state new hire directory will be matched against our IV-D caseload, and when an obligated parent is identified, an income withholding order will be issued, directing the employer to begin deducting a portion of the obligated parents wages for child support.

Section 10 applies to Sections 1 -9. Access to information in the three directories is limited, and individual identifying information is deemed confidential. The information contained in the central case registry and new hire systems described above will be shared at the federal level, but is only accessible to other courts and IV-D agencies having appropriate jurisdiction over child support,

custody, visitation and welfare. The information maintained at state level may also be used by the state for workers comp, employment security, and state tax fraud detection activities and eligibility determination.

Section 11 allows the CSED to access otherwise confidential information maintained by financial institutions, which will facilitate location of delinquent parents and their assets. CSED is required to pay reasonable expenses incurred by the institution to provide this information, and the institution is not liable for disclosing such information to the CSED. We had an early fall meeting with financial lobbyists to get their input in developing this section.

Section 12 is a "seek work" section that requires obligated parents who claim inability to pay support to seek suitable employment and provide progress reports to the department. The CSED will have, as one of its enforcement tools, the ability to order an obligated parent to seek work over a six month period. If you think about it, welfare recipients now only have time limited benefits, and under the FAIM program, they are required to seek work and substantiate their efforts. Now, the obligated parent will have the same duty as the custodial parent to find work to support his/her family.

Section 13 allows another state to send income withholding orders directly to Montana employers, and requires employers to honor those orders. This is a required provision of the Uniform Interstate Family Support Act. When Montana adopted the Uniform Act in 1993, this provision was not included for consideration by the Legislature. Now, under federal welfare reform, UIFSA must be adopted verbatim. Although this provision affects Montana employers, direct income withholding must be adopted by all states and all employers across the nation will be subject to the same provisions.

New Sections 14 and 15 and amended sections 17 -21 comply with the requirement that income available for the collection of child support include public retirement and disability benefits.

Sections 22-24 amend various titles of Montana code annotated to require social security numbers on professional and occupational license applications, marriage licenses and divorce decrees. SSNs are essential to facilitate location and identification of individuals to whom support is owed and from whom support must be collected.

Section 25 and 26 provides that all support orders - whether issued by district courts or the CSED - are subject to registration in the central case registry as described in the beginning of this bill, and defines the information that must be included in district court orders to facilitate enforcement of child support, medical support and income withholding.

Section 27 - 41 are minor changes necessary to update and adopt UIFSA verbatim with language developed by the Uniform Code Commissioners. The purpose of UIFSA is to facilitate interstate enforcement by setting forth a set of standards for all states to use to determine jurisdiction over an order.

Section 42 updates the code to reference UIFSA and other laws under which states may refer

interstate cases. It also updates the definition of paternity blood test to include DNA testing using tissue samples as well as blood tests. Also, under federal welfare reform, the spousal support order no longer needs to be in the same order as the child support order in order for a child support agency to collect it.

Section 43 provides minor clarification of the conditions under which services are provided by the CSED.

Section 44, amending MCA 40-5-206, the CSED's current section under which we obtain location information from various agencies, adds tax records, corrections records, and records of public utilities, cable television companies, financial institutions and other entities maintaining customer data bases to the list of entities which must provide name, address, and asset and liability information to the CSED upon request. This is a locate tool. Exemption from liability provisions are added. Federal law also provides that the CSED may not disclose information concerning the whereabouts of one party to another if the CSED is aware that a protective order has been issued or believes the release of information may result in physical or emotional harm to the other party.

Section 45 simply states that a "bill for paternity blood tests" is admissible in evidence without third party foundation testimony."

Section 46 amends 40-5-225. This is the section under which the CSED establishes support orders. The Omnibus Budget Reconciliation Act of 1993 made changes to the creation and enforcement of medical support, or health insurance orders, and Montana adopted these which are codified at Title 40, Chapter 5, Part 8. However, in order for the CSED to thoroughly and efficiently consider the requirements for a medical support order, it makes more sense for this to be done at the same time the support order was being established, rather than in a separate proceeding with a separate hearing at which both parents must also participate, since the obligation to pay for health insurance can impact a child support obligation.

Section 47 amends 40-5-226 for a number of purposes. First, as in HB 168, now referred to Senate Judiciary, the department is clarifying that CSED hearings are held telephonically. Then, since both parents, as well as the CSED may be parties to an action, the CSED had to clarify when a default occurs. Further federal law requires that obligees or custodial parents be given notice of actions when they are not parties. Any order established by the CSED, just as orders established by the district court, must conform to the case registry and processing requirements. MCA 40-5-226 is also the section which sets out the hearing officer's powers. In order to comply with the federal requirement that various entities provide information to the department upon request and others upon receipt of a subpoena, the CSED hearing officer must have the ability to enforce those requirements. Sanctions for failure to provide the requested information are required by federal law.

Section 48 changes, amending 40-5-227 are not mandated by federal law, but are introduced at the CSED's initiative to reduce costs and provide for more timely and efficient enforcement of orders. When the department's administrative process was developed in the late 70's,

administrative establishment and enforcement of paternity and support was uncommon. For that reason, in order to ensure that the department's administrative orders would be recognized by other states, the department filed an abstract or summary of the order with the district court and this section provide that upon filing, the order was effective as a district court order. Since that time, many, many states have moved to administrative processes as allowed and encouraged by federal law, and administrative orders are recognized as valid without this filing with the district court. The federal Full Faith and Credit for Child Support Orders Act also provides that administrative orders are entitled to full faith and credit just as a court order would be. Therefore, it is no longer necessary to create and file abstracts of each administrative order with the district court. This provision will save the department time and will alleviate the clerks of court from this ministerial duty. This also makes sense because the CSED will become the ultimate record keeper for child support orders, and there is no need to continue to place this docketing burden on district courts for them to abstract the orders back to CSED for inclusion in the central registry.

Sections 49 - 53 amend Montana's paternity establishment process. Section 49 allows the department to enter a final paternity order upon consent. Federal law requires closure to the paternity process.

Section 50 - amends the conditions under which paternity testing may be requested or ordered, in conformity with the federal welfare reform bill. Revises statutes relating to blood testing to clarify that the department may issue a sub-poena for an alleged father to take blood tests upon receipt of an affidavit from the mother alleging that an act that could have resulted in the child's conception occurred. It also clarifies that even if the department does not, or after hearing cannot, pursue blood testing of the father, the potential for blood testing is not forever barred if the department receives new evidence.

Section 51, at the department's initiative, clarifies that the department's vital records bureau will prepare a substitute birth certificate for a child *born in this state*, since they do not maintain records for children born in other states. The section also clarifies that a paternity consent order is a final order.

Section 52 provides that a paternity matter referred to district court at the request of an alleged father after genetic testing has been conducted is to be heard by a judge sitting without a jury.

Section 53 provides that if an alleged father desires a second paternity test after a positive first test, the court shall order such test upon the alleged father's advance payment

Section 54 has two primary changes - one at the CSED's initiative and the other federally mandated. The first part is some minor clarifications to include a reference to a referral under the Uniform Reciprocal Enforcement of Support Act, and clarifies that upon receipt of an interstate referral the department may proceed under the Uniform Interstate Family Support Act or any other remedies available to the department. UIFSA is not always the most efficient manner of handling interstate cases, and Montana has other effective alternatives available. We want to clearly state that the CSED may use any enforcement tool available under existing law. The end of this section also contains the mandated lien registry. The federal welfare reform bill requires a

mechanism by which support liens issued in other states may be recognized in Montana. Upon registration in Montana of a foreign support lien, the lien could be enforced by the CSED as it would its own liens. This lien registry is also part of the case registry and processing unit created in Sections 1-10 of the bill.

Section 55 complies with the federal recognition that a state IV-D agency may also enter into cooperative agreements for services with Indian Tribes

Section 56 amends the department's process for registration of foreign support orders. These changes are not mandated by federal law but are designed to closely follow the registration of foreign order provisions of the Uniform Interstate Family Support Act at MCA 40-5-188 through 40-5-191, which provide for a hearing to contest the registration of a foreign support order.

Section 57 amends 40-5-274. In order to comply with existing federal law and regulation, and the new case registry and payment processing requirements, it is necessary that all support orders provide that the child support payment shall "follow the child".

Sections 70 through 77 amend the law relating to issuance and enforcement of income withholding orders issued by the CSED. Many of the same changes made to the district court withholding provisions are repeated here. The intent of the federal law is to get support deducted from income more quickly. Although IV-D income withholding orders already applied to a broader definition of income and applied to payors, not just employers, here too, the definition of income has been expanded in conformity with federal law to include retirement and disability benefits. The department has also clarified that it may enforce a foreign support order under these provisions, without need to first register the foreign support order, since all the same defenses to the order may be raised in the income withholding action.

Section 78, amends MCA 40-5-443, as part of the new federal requirement that employers, and other entities, provide locate information to a IV-D agency of this or another state, upon request. Federal law also requires that failure to provide the information subjects an employer to sanction. While Montana has required employers to provide this information upon request for several years, there is currently no penalty for not doing so.

Sections 79 through 85, amend Montana's process for suspension of licenses for the nonpayment of child support. Although Montana adopted this tool in 1993, federal law now mandates such a process. In order to comply with federal law, Montana's process must be amended to include the ability to suspend or refuse recreational licenses and must be broadened to allow suspension not just for a delinquent support obligation but also for failure to comply with a warrant of subpoena related to paternity or support proceedings. The CSED worked with the Department of Fish, Wildlife and Parks to develop these provisions with the least burden on that agency and to minimize the impact on Montana sportsmen. This revisions to the license suspension law contemplate suspension of hunting licenses that are issued by draws or auctions from one central location. These licenses would be suspended for one year, as from a logistic standpoint they cannot be reinstated if a delinquency is paid.

Sections 86 through 92 amend Montana's district court provisions regarding paternity, in the same way that our administrative processes were amended to conform with the federal welfare reform law. The definition of paternity testing is clarified to include that either blood or tissue may be used. In order to have one central place to check for paternity acknowledgments, which create a presumption of paternity from which a support order may be created, the department proposes deleting the language allowing these documents to be filed in any of the 56 counties. The department currently is required to provide information to parents about the rights and responsibilities of acknowledging paternity - now this information must be provided both in writing and orally. The department is clarifying that the presumption of paternity arises when the acknowledgment is filed. The federal welfare reform bill requires the state allow an acknowledgment of paternity to be rescinded so a specific process for that is provided in Section 87, amending 40-6-105. Acknowledgments not rescinded in accordance with this provision are final and irrebuttable.

Section 88 allows a temporary support order to be established in a paternity proceedings once a paternity test provides clear and convincing evidence of paternity. This is required by welfare reform with a view towards collecting child support for the family sooner.

Section 89 amends MCA 40-6-115, in conformity with the federal welfare reform efforts, to provide that any district court paternity action must be heard by the court sitting without a jury. Also in this section, as in the changes to the administrative paternity process, if a party objects to the paternity test results, and pays for a second test in advance, the court shall order the second test. Similar to the provisions in the administrative paternity process, bills for pregnancy, childbirth and paternity testing are required to be admissible in evidence without foundation testimony and are prima facie evidence of the amounts incurred.

Sections 90 and 91 amend 40-6-116 and 40-6-117, which are the sections concerning the details of a support order in a paternity proceeding, in the same way that 40-4-204 and 40-4-206 are amended for a support orders in a dissolution action. These provisions are required and necessary for the case registry and payment processing requirements of the federal welfare reform bill. As we saw in other sections of the bill, as a requirement of the federal welfare reform effort, to assist in location efforts, the social security number of a person subject to a paternity determination must be included in the records of the case.

Section 92 amends MCA 50-15-210 to clarify that paternity acknowledgments filed with the department will be filed with the child's birth certificate if the child is born in this state and in an acknowledgment registry created for this purpose if the child is not born in Montana.

Section 93, amending MCA 50-15-223, is amended to conform with federal law that requires administrative paternity determinations to be recognized in the same way as those of a court.

Section 94, amends MCA 50-15-403 to requires social security numbers be included on death certificates. This is a federal requirement.

Section 95, amends MCA 53-2-613, to provide that child support that accrued before the receipt

of public assistance is not assigned. The federal welfare reform law makes this change. Previously all support owed up to the time and during the receipt of public assistance was assigned to the state. This section also transfers a child support payment due to the custodial parent to a caretaker relative if the custodial parent relinquishes physical custody of a child to a caretaker relative who then obtains public assistance for the child. This provision facilitates the timely collection of support from the obligor for the care of the child without the necessity to create a new support order. Subsection (e) was added to clarify that once support is assigned to the department due to the payment of public assistance, the debt is owed to the department, not the public assistance recipient, and the recipient's action or inaction cannot negate the department's right to collect the support owed to the department.

Section 96, amends MCA 61-5-107, to provide that social security numbers must be provided on applications for commercial driver's licenses. This is a requirement of federal law and is designed to help facilitate location of an obligor and assets.

Section 97, amending MCA 87-1-102, is part of the required effort to add recreational licenses to the ability to suspend licenses for the nonpayment of child support or failure to comply with a subpoena or warrant. This section requires the Department of Fish, Wildlife and Parks, to notify a person when his license or privileges have been suspended by an administrative authority, just as they would when a court suspends license privileges for violation of fish and game laws.

Sections 98 and 99, amend MCA 87-2-106 and 87-2-202 to provide that a social security number must be provided for an application for licenses under Title 87. Although not mandated, applications already include driver's license numbers, which in most cases is the SSN. Requiring The SSN will facilitate recreational license suspension, and location of an obligor and potential assets.

Section 100 is the codification instruction.

Section 101 is the severability clause.

Section 102 provides that a two-thirds vote is required to limit liability of a public entity that discloses information pursuant to the requirements of the amended 40-5-206, Section 44 of the bill. Section 325 of P.L. 104-193, the federal welfare reform bill, specifically requires the designated public entities such as the department of revenue, the corrections department etc. to provide the designated information. Federal law also specifically requires that any public or private entity providing information in conformity with this requirement be exempted from liability for such disclosure.

Section 103 is a retroactive applicability clause because the department must process income withholding payments through its newly created registry, for income withholding orders issued pursuant to MCA 40-5-315 after January 1, 1994.

Section 104 is the effective date section. Most of the federally mandated provisions must be in effect by July 1, 1997. Some must be in effect by October 1, 1998 and the remainder can have the

standard effective date of October 1, 1997.

This bill does have a fiscal note which I'd like to discuss briefly:

In order to help families help themselves off the welfare roles, the goal is to secure more child support payments in an effort to allow the custodial parents to work and live with less government assistance. Up front costs to achieve these goals are to implement required projects that seek to:

- (1) expedite the information gathering process needed for child support collection by centralizing information and interfacing with other broad information data bases
 - Central Support Registry of all Montana child support orders allowing a single statewide access point. Estimated cost \$53,839 state special, \$104,511 federal.
 - Financial Institutions and Utilities interfaces allowing access to locate parents and assets. Estimated cost \$8,500 state special, \$16,500 federal. Estimated revenue \$19,853 state, \$27,666 federal.
- (2) enhance the success of income withholding as an effective support collection tool
 - W-4 New Hire Reporting shortening reporting time for a gain of 40 days to issue a child support income withholding order, resulting in quicker payment to the family. Estimated cost \$160,800 state special, \$44,150 general fund, \$203,728 federal. Estimated revenue \$178,788 state, \$245,921 federal.
 - Centralized Income Withholding Receipting gives employers one place to send all wage withholdings. Estimated cost \$53,839 state special, and \$104,511 federal.
- (3) send child support payments to families sooner
 - 2 Day Income Withholding Turnaround requires the child support division to issue an income withholding order to the employer 2 days after receiving notice that a child support obligor has become employed. Estimated cost \$22,131 state special, \$42,959 federal.

Total estimated cost of the bill \$688,936 of which \$190,087 is state special revenue, \$44,150 is general fund, and \$454,699 is federal fund. Total estimated revenue \$519,748 of which \$208,552 goes to the state special revenue fund, \$10,394 goes to county revenue funds, and \$300,802 goes to federal revenue. The Net cost of (\$169,187) is funded by (\$18,465) state special, (\$44,140) general fund, \$10,394 county and (\$153,897) federal.

While there is a recognizable fiscal impact due to start up costs of these programs, these are not unfunded federal mandates. The federal government shares in the cost of beginning and maintaining these programs. The fiscal impact of not enacting the federal requirements is greater.

The federal government would withdraw funding for the CSED and state welfare programs.

I hope this summary has helped you in understanding the key provisions of this legislation. As you can imagine, we had very tight timeframes under which to develop a bill to conform to the federally mandated requirements, but I can personally assure you we have done our best to involve Montana businesses, the judiciary and state agencies in the process. We have been receiving input from those segments, working with the federal government to clarify requirements, and working with Senator Hargrove and legislative counsel up to the last minute to ensure we have a good product for consideration by the Legislature. Senator Hargrove advised you of our willingness to work with you toward any revisions necessary to make this federally mandated legislation work for Montana.

Thank you for the opportunity to testify. I have staff here today with expertise in both the legal and fiscal aspects of this legislation. We'd be glad to answer any questions.

February 20, 1997

To: Senator Don Hargrove and Members of the Senate Judiciary Committee

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 2/20/97
FILE NO. SB374

Hello, I am here to tell you why I think you should approve Senate Bill 374.

My name is Maureen Shaughnessy. I live in Helena and have two children, 15 and 13 years old; both of them are fine young men. I have raised my two sons by myself for 13 years. I have been legally divorced from their dad for 11 years. Although there is a court order saying that my children's father should pay child support, and I have an excellent caseworker at Child Support Enforcement who puts hours into trying to collect the child support from the father, we are still not getting that support from him. For the last 5 years, he has worked in other states, making it very time-consuming and difficult to track him down and get him to pay. He has frequently gotten into and out of a job faster than we can track him down. He makes good money and I believe it is wrong that he is not supporting his kids.

I understand that some people object to the *New Hire Reporting* because it might place a burden on small businesses in Montana.

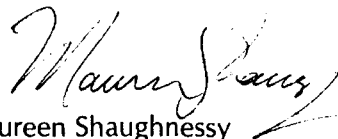
As I said already, I'm a single parent. I am also a self-employed small business owner. As a business owner I occasionally have employees. For any employee, I already have to fill out a few forms and do some quarterly paperwork. Filling out one more form like this one to report each new employee within 20 days *isn't* going to hurt me. But it *will* help allot of children.

I know my filling out a form is not going to get *my* children the support they deserve and need. But if I am willing to do this small thing — this little extra paperwork — and if other employers in Montana do the same, then there *is* a chance my kids will eventually get their support.

Any laws that will make it easier to track nonpaying parents and to collect support from parents who are intentionally trying to keep from paying, will benefit the children who should be getting that support.

Let's give the Child Support Enforcement Division some sharp teeth! Please vote for Senate Bill 374.

Sincerely,



Maureen Shaughnessy
721 Broadway
Helena, Montana 59601
443-0141 (wk)
443-3165 (hm)



DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR
CHILDREN AND FAMILIES

JAN 07 1997

Ms. Mary Ann Wellbank
Program Administrator
Child Support Enforcement Division
Department of Public Health and Human Services
3075 N. Montana Avenue, Suite 112
P.O. Box 202943
Helena, Montana 59620

Region VIII
Federal Office Building
1961 Stout Street
Denver, CO 80294-3538

SENATE JUDICIARY COMMITTEE

DOCUMENT NO. 3DATE 2/20/97FILE NO. SB 324

Dear Ms. Wellbank:

This is in response to your request for clarification of the consequences if a State fails to enact laws or otherwise conform to the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

In order for a State to receive Federal funding for the operation of its child support enforcement program, it must have an approved State IV-D plan which meets the requirements of section 454 of the Social Security Act (the Act). One of those requirements, specified at section 454(20)(A), is that the State must have in effect all of the laws required by section 466.

PRWORA made numerous changes to sections 454 and 466 of the Act. Although the effective dates of the PRWORA provisions vary, many of the new requirements will require State legislation to be enacted during the 1997 legislative session.

When a State fails to comply with all statutory requisites, its plan is subject to disapproval by the Office of Child Support Enforcement (OCSE). In accordance with sections 452(a)(3) and 455(a)(1)(A) of the Act, there would then be no authority to expend Federal funds under Title IV-D of the Act for the operation of the State's child support enforcement program.

Therefore, a determination that a State IV-D plan is disapproved will result in immediate suspension of all Federal payments for the State's child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE. In addition, in order to be eligible for a block grant for Temporary Assistance to Needy Families (TANF), section 402(a)(2) of the Act requires a State to certify that it will operate a child support enforcement program under the State plan approved under part D. Therefore, TANF funding would also be jeopardized if the State failed to enact the required child support legislation on a timely basis.

Due to the gravity of the consequences that may result, we urge you to take whatever steps are necessary to have the required legislation enacted and implemented.

Sincerely,

Jo B. Shannon

Jo B. Shannon
Program Manager
Child Support Enforcement



DEPARTMENT OF HEALTH & HUMAN SERVICES

RECEIVED

FEB 18 1997

**CHILD SUPPORT
ENFORCEMENT - HELENA
ADMINISTRATION**

ADMINISTRATION FOR CHILDREN AND FAMILIES
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

PROGRAM INSTRUCTION

ACTION TRANSMITTAL

REVISED

OCSE-AT-97-02

February 10, 1997

TO: STATE AGENCIES ADMINISTERING CHILD SUPPORT
ENFORCEMENT PLANS APPROVED UNDER TITLE IV-D OF THE
SOCIAL SECURITY ACT AND OTHER INTERESTED
INDIVIDUALS

SUBJECT: Revised Instructions for Requesting an Exemption
from the Mandatory Laws and Procedures in Section
466 of the Social Security Act.

BACKGROUND: The State plan provision at section 454(20) of the
Social Security Act (the Act) requires States to
have in effect and use the laws and procedures
specified in section 466 to improve the
effectiveness of child support enforcement
programs. However, under section 466(d), States
may apply for an exemption from implementing one
or more of these laws and procedures.

CONTENT: This Action Transmittal establishes revised
procedures States must follow when applying for an
exemption and supersedes the instructions in
OCSE-AT-88-19. The following changes were made to
address Federal and State experience with the
exemption process and to implement the
requirements of section 13721 of the Omnibus
Budget Reconciliation Act of 1993 (OBRA'93, Pub.
L. 103-66). This includes section 466(a)(2) of
the Act which added expedited processes to require
use of such processes either under the State
judicial system or under the State administrative
processes, for establishing paternity, in addition
to obtaining and enforcing support orders. In
addition, it was revised to be consistent with the
new requirements in the Personal Responsibility
and Work Opportunity Reconciliation Act of 1996
(PRWORA), P.L. 104-193.

This document is organized as follows:

I. - Introduction - A list of the mandatory procedures in section 466 of the Act is added to the introduction so that States know which procedures are eligible for exemptions. Editorial and other nonsubstantive changes are made for clarity.

II. - Exemption Process And Material For Submittal

III. - Exemption Categories - This includes instructions regarding the necessary justification and documentation required as part of the application for an exemption and termination of exemptions; and a note on authority exemptions.

IV. - Termination Of Exemption Or Disapproval Of Request For Extension

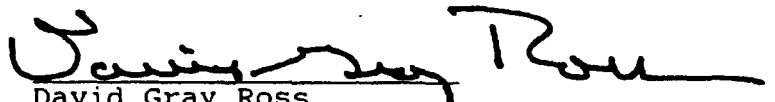
V. - Certification Of Implementation Of Mandatory Procedures

SUPERSEDED
MATERIAL:

OCSE-AT-88-19 dated December 22, 1988.

INQUIRIES
TO:

ACF Regional Administrators


David Gray Ross
Deputy Director
Office of Child Support
Enforcement

I. INTRODUCTION

Since the inception of the Federal Child Support Enforcement program, certain laws and procedures have noticeably increased the efficiency and effectiveness of some States' programs. To improve the nationwide child support effort, Congress required States to implement the particular laws and procedures that were responsible for the success of those State programs. Section 466 of the Act currently lists twenty-one categories of required State laws:

- (1) Income withholding;
- (2) Expedited processes including administrative actions by the State agency, substantive and procedural rules and coordination with ERISA;
- (3) State income tax refund offset;
- (4) Liens against real and personal property; full faith and credit to such liens;
- (5) Procedures concerning paternity establishment;
- (6) Posting of security, bonds or other guarantee to secure payment of overdue support;
- (7) Reporting arrearages to credit bureaus;
- (8) Providing for income withholding in orders;
- (9) Requiring that any payment or installment of support is a final judgment by operation of law;
- (10) Review and adjustment of child support orders upon request;
- (11) Giving of full faith and credit to a determination of paternity made by any other State, whether established by voluntary acknowledgment or administrative or judicial processes;
- (12) Locator information from interstate networks;
- (13) Recording of social security numbers in certain family matters;
- (14) Administrative enforcement in interstate cases;
- (15) Procedures to ensure that persons owing past-due support either work or have a plan for payment of such support;

- (16) Authority to withhold or suspend licenses;
- (17) Financial institution data matches;
- (18) Enforcement of orders against paternal or maternal grandparents;
- (19) Health care coverage;
- (20) Uniform Interstate Family Support Act; and
- (21) Laws voiding fraudulent transfer.

If a State can demonstrate to the satisfaction of the Secretary that any one, or all, of the required laws and procedures will not increase the effectiveness and efficiency of the State's child support enforcement program, the Secretary may grant the State an exemption from implementing one or more of the required procedures. Additionally, an exemption is available if a State has and uses a similar procedure which does not fully comply with the mandate, law or procedure and the State shows evidence that implementation of the mandatory procedure would not increase the efficiency and effectiveness of the State's existing procedure. With respect to procedures for expedited processes, a State may apply for an exemption for one or more political subdivisions of the State.

This Action Transmittal addresses requests for exemptions from the requirements of section 466 of the Act only. Please read this material carefully before preparing any requests for exemptions.

II. EXEMPTION PROCESS AND MATERIAL FOR SUBMISSION

A. Process

States must submit an original and one copy of each exemption request to the ACF Regional Office. The Regional Office will review the State's submission and will recommend to the Central Office approval or disapproval of the State's exemption request and, if the request is approved, the length of the exemption period. An exemption, including an extension, may be granted for up to three years.

If further materials are needed before a recommendation can be made, the Regional Office will request them from the State in writing. The State must provide the additional material within two weeks from the date of the Regional Office's letter requesting the additional material. If the State's submission remains incomplete or insufficient to the point that the review cannot proceed, the Regional Office

will recommend disapproval of the State's request.

The Deputy Director of OCSE will notify States in writing that exemptions have been approved or disapproved and the basis for the decision. If an exemption is approved, OCSE's approval letter will specify the exemption period. Disapprovals of requests for exemptions are not subject to administrative appeal.

All exemptions are subject to review at any time during the exemption period. If circumstances change, an exemption may be terminated by the Deputy Director of OCSE. (Section IV contains information pertaining to disapproval or termination of an exemption.)

States must apply for an extension of an exemption, or enact and implement the necessary laws and procedures, prior to expiration of the exemption period. If the State applies for an extension, it must submit an original and one copy of each exemption request 90 days before the current exemption period expires. The State's submission for an extension must meet the requirements for an initial exemption request, must address any changes in circumstances from the time of its initial request, especially changes that may affect the efficiency and effectiveness of the State's operation, and must contain documentation, reflecting current data, that support the request.

B. Material for Submission of Requests for Exemptions and Requests For Extensions of Previously Approved Exemptions

1. Cover letter. The State's cover letter must specify the mandatory procedure(s) from which the State is requesting an exemption.
2. Justification and Documentation. A State must submit the justification and documentation addressed under Section III, as appropriate, for each exemption request and for each request for an extension of a previously approved exemption.

III. EXEMPTION CATEGORIES

An exemption authorizes a State not to implement a mandatory procedure or to continue to operate a similar existing procedure which does not comply with all of the requirements in the statute and regulations but contributes to an effective and efficient Child Support Enforcement program. In the final rules issued December 23, 1994 (59 FR 66204) as OCSE-AT-9406, governing paternity establishment and program audit, we revised the definition of expedited process and deleted the requirement that a presiding officer may not be a judge. This change reduced the necessity for exemptions

from expedited processes requirements. As a result, the usual basis for an exemption from expedited processes (to allow use of a judge) is now inapplicable, there should be only limited instances in which an exemption in the expedited processes area is requested or warranted.

States do not need to apply for extensions of existing authority exemptions. As specified in OCSE-AT-85-17, there are two types of "authority exemptions" which relieve a State from the requirement to enact a law in connection with a mandatory procedure: 1) the State already has a law which complies with the requirements of the mandatory procedure, and 2) the State does not have authority to have a State income tax. States may request an authority exemption from State income tax refund offset requirements merely by attesting to the fact that the State does not have a State income tax.

A State must meet different criteria depending upon the type of request.

A. Exemption Not to Implement a Procedure

A State may apply for an exemption from implementing any of the required procedures in section 466(a) of the Act. The State must submit:

Evidence that implementation of a particular procedure would not increase the efficiency and effectiveness of the State's Child Support Enforcement Program.

To meet this criterion, a State must show why implementation of the particular mandated procedure would not be cost effective (estimated collections resulting from the procedure are less than estimated costs) at the end of three years. Data must be provided to show estimated collections from and costs of the procedure for the three years prior to the year of the request for the exemption.

The evidence must include an estimate of:

- o the developmental costs of implementing the procedure;
- o the costs of operating the procedure compared to the expected collections as a result of implementing the procedure; and
- o the staffing needed to operate the procedure.

In addition, the State must compare for a fiscal year period the effectiveness of its current program to the

effectiveness of the program were it to implement the procedure, by responding to the following questions, as appropriate. Would the procedure increase the State's:

- o ability to process cases, i.e., the average length of time to take an action in a case?
- o welfare savings by reducing the number of TANF cases?
- o number of support orders enforced?
- o collections (inter- and intrastate)?

Statistical Requirements

A State must fully document the request and define the methodology(ies) used to reach its conclusions. The methodology(ies) must be conceptually sound and supported by data that are reliable and representative. Where estimates are used, the State must identify any assumptions made and/or the sampling approach(es) used. In addition, all sampling must be statistically valid, include adequate sample size and take into account sampling error. All inferences should be made at a 95 percent (or greater) level of significance.

B. Exemption to Operate a Similar Existing Procedure

If a State applies for an exemption to operate a similar existing procedure, it must meet the three criteria below.

1. A description of the existing procedure including identification of those parts that conform to the statutory and regulatory requirements and those that do not conform.

To meet this criterion, a State must describe its existing system. The description should address procedures used for the handling and processing of cases. A State may submit guidelines or a manual that adequately describes the existing system. The State must also identify those aspects of the existing procedure that do not conform to the statutory and regulatory requirements.

2. Evidence that no category of cases is excluded.

To meet this criterion, a State must attest to the fact, by submitting a statement from the State IV-D Director, that its existing procedure is used for all categories of IV-D cases (inter- and intrastate), i.e., TANF, non-TANF and IV-E foster care cases. Instead of a written statement, a State may submit any portion of its procedures or guidelines that

shows that all categories of IV-D cases are processed in the existing system.

3. Evidence that implementation of a mandatory procedure would not increase the efficiency and effectiveness of the State's existing procedure.

To meet this criterion, the State's evidence must include an estimate of:

- o the developmental costs of implementing the additional statutory or regulatory requirements;
- o the operating costs compared to the collections expected as a result of the additional statutory or regulatory requirements;
- o the staffing needed to operate the additional statutory or regulatory requirements.

In addition, the State must compare for a fiscal year period the effectiveness of its current program to the effectiveness of the program were it to implement the additional statutory or regulatory provisions, by responding to the following questions, as appropriate. Would the provision increase the State's:

- o ability to process cases, i.e., the average length of time to take an action in a case?
- o welfare savings by reducing the number of TANF cases?
- o number of support orders enforced?
- o collections (inter- and intrastate)?

Statistical Requirements

A State must fully document the request and define the methodology(ies) used to reach its conclusions. The methodology(ies) must be conceptually sound and supported by data that are reliable and representative. Where estimates are used, the State must identify any assumptions made and/or the sampling approach(es) used. In addition, all sampling must be statistically valid, include adequate sample size and take into account sampling error. All inferences should be made at a 95 percent (or greater) level of significance. In addition, when showing the effectiveness of its current program, data must be gathered from a period of time no earlier than three years prior to the year of the exemption request.

IV. REVOCATION OF EXEMPTION OR DISAPPROVAL OF REQUEST FOR EXTENSION

As stated previously, exemptions are subject to review at any time during the exemption period. If circumstances change, an exemption may be revoked by the Deputy Director of OCSE. The regulations at 45 CFR 302.70(d) state that if an exemption is revoked during the exemption period, or an extension of an exemption is not granted, the State must enact the appropriate laws and implement the mandatory practice by the beginning of the fourth month after the end of the first regular, special, budget or other session of the State's legislature which ends after the date the exemption is revoked or the extension is denied. If no State law is necessary, the State must establish and be using the procedure by the beginning of the fourth month after the date the exemption is revoked or the extension is denied. Any exemption for expedited processes to permit use of judges as presiding officials was obsolete as of December 23, 1994.

V. CERTIFICATION OF IMPLEMENTATION OF MANDATORY PROCEDURES

To ensure that States fully implement each mandatory procedure required under sections 454(20) and 466 of the Act and 45 CFR 302.70, States must submit for approval copies of all required laws, written policies and procedures, and administrative regulations or court rules as attachments to their IV-D State plan page for each mandated procedure.

The ACF Regional Administrator, in consultation with the Regional Chief Counsel, as appropriate, will review each submittal to ensure that all requirements are met. An approval of a State plan preprint page by the ACF Regional Administrator indicates that the State has fully implemented a procedure or has an exemption consistent with Section III of this Action Transmittal.

**MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE**

ROLL CALL

DATE

2/20/97

[illegible]

SEN:1995
wp.rollcall.man
CS-09

DATE February 20, 1997
 SENATE COMMITTEE ON Judiciary
 BILLS BEING HEARD TODAY: SB 374
HB 215, 239, 321

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
M.A. Wellbank	DPHHS / (S&D)	SB374	✓	
Scott Resnick	VALLEY PROCESS SERVICE	HB321	✓	
Dean Crow	Valley Process Service	HB321	✓	
Maureen Shoughnessy	Self-Business	SB374	✓	
Joe Kerman	Sec. of State	HB239	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on February 21, 1997, at 8:06 a.m., in the Senate Judiciary Chambers (Room 325) of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: Sb 382, SB 383, posted
February 18, and SB 385,
posted February 20

Executive Action: SB 374, SB 382, SB 383, SB 385

EXECUTIVE ACTION ON SB 374

Amendments: sb037401a.avl (EXHIBIT #1)

SEN. STEVE DOHERTY asked Mary Ann Wellbank and Amy Pfeifer to explain the amendments. **Amy Pfeifer.** Amendments 1 and 10 were requested by the Department of Fish, Wildlife and Parks; amendment 2 is from DPHHS and makes language compatible to federal language on forms; amendment 3 pertains to new hire reporting penalty for each employee; amendment 4 corrects an omission; amendment 5 provides for an automated data match with financial institutions; amendment 6 pertains to withholding from

retirement systems; amendment 7 addresses SEN. DOHERTY's concerns; amendment 8 corrects a typographical error; amendment 9 is a clarification requested by the Department of Fish, Wildlife, and Parks. (EXHIBITS #a, #b, #c, and #d from Mary Ann Wellbank, DPHHS)

Motion/Vote: SEN. DOHERTY MOVED SB 374 BE AMENDED-sb037401.avl. THE MOTION CARRIED UNANIMOUSLY.

Motion: VICE CHAIRMAN LORENTS GROSFIELD MOVED TO FURTHER AMEND SB 374 - sb37403.avl (EXHIBIT #2).

Discussion: VICE CHAIRMAN GROSFIELD. I understand the need for this bill, but it is the most intrusive bill I've ever seen, and that scares me. I don't see how Congress passed this. I also have several other ideas for amendments that are not on paper yet. These amendments would: amendment 1 lowers the fine to \$3 per employee; 2 addresses an issue similar to 1; and 3 de-earmarks funds to the State General Fund. Regarding amendments 4) and 5) - it is not good public policy for fines to go to specific funds in agencies. On page 16, I would strike lines 21-22, Subsection (b). This is an untenable position to ask an employer to be in. Regarding amendments 6) and 7) - the Department of Public Health and Human Services (DPHHS) wanted liability protection, but I don't believe we need this. In fact they will be more careful if they don't have this protection.

SEN. DOHERTY. If we drop the fines would we be in the same position as we were with the Montana Highway Patrol where it costs more to write a ticket and process it than the fine is? I do agree, however, with the general thrust of the amendment.

VICE CHAIRMAN GROSFIELD. You made a good point. I'm not sure what amount is right, but I don't want to let employers off the hook.

CHAIRMAN BRUCE CRIPPEN. We have several options: pass the bill as it is; kill it; hold it and make a revised bill; or make amendments and send it to the House with a request for an early hearing and a Free Conference Committee.

SEN. MIKE HALLIGAN. Could we get the Department to react immediately after the sponsor of the amendment makes the motion? Mary Ellen Wellbank. Amendments 1 and 2 are okay, amendment 3 pertains to state revenue in excess of the \$400,000 going to the general fund.

SEN. SUE BARTLETT. Has this money been reverting to the general fund? Mary Ellen Wellbank. Not this year, but last year it did. We have no general fund money in our budget now. Amendment 5 is UIFSA - direct income withholding to the employer (a copy was given to SEN. HALLIGAN). Amendments 6 and 7 are required under federal law and could be a problem.

SUBSTITUTE MOTION: CHAIRMAN CRIPPEN MADE A SUBSTITUTE MOTION TO ADOPT AMENDMENTS 1 AND 2 OF sb37403.avl. THE MOTION CARRIED UNANIMOUSLY.

CHAIRMAN CRIPPEN. We will eliminate amendment 3 from the proposed amendments.

MOTION: VICE CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENTS 4 AND 5.

SEN. SHARON ESTRADA. I believe it is difficult to collect child support, and I can't support this bill.

VOTE: SEN. GROSFIELD'S MOTION TO ADOPT AMENDMENTS 4 AND 5 CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS MCNUTT AND ESTRADA WHO VOTED NO.

{Tape: 1; Side: A; Approx. Time Count: #29.6;; Comments: 8:35 a.m..}

SEN. BARTLETT. I believe it is unlikely this bill will get a two-thirds vote, and so I prefer not to adopt amendments 3 and 4.

SEN. DOHERTY. I can't believe other personal, proprietary information could be given to the Department and that, if misused, we'll not hold DPHHS liable. I like SEN. GROSFIELD's amendment.

MOTION/VOTE: VICE CHAIRMAN GROSFIELD MOVED THAT AMENDMENTS 6 AND 7 BE ADOPTED. THE MOTION FAILED WITH ALL MEMBERS VOTING NO EXCEPT SENATORS GROSFIELD, BISHOP, HOLDEN, AND DOHERTY WHO VOTED AYE.

HEARING ON SB 385

Sponsor: SEN. BARRY 'SPOOK' STANG, SD 36, St. Regis

Proponents: Chris Person, Paradise

Opponents: None

Opening Statement by Sponsor: SEN. BARRY 'SPOOK' STANG, SD 36, St. Regis. SB 385 deals with father's rights and custody. Section 1, lines 18-19 are the main part of the bill.

Proponents' Testimony: Chris Person, Paradise. (EXHIBIT #3)
This bill will eliminate \$700 in legal fees and make the role "volunteer" rather than legally protected, especially when the biological father has no interest in raising his child. This helps families and the child.

Dawn Person, Paradise (EXHIBIT #4). Informed fathers get 30 days longer than a mother to make a legal decision about a child at birth. Child custody and child support are two separate issues.

SEN. HOLDEN. I commend **SEN. HARP** for his efforts. It is important to take action at the state level, so I support the bill.

SEN. BISHOP. I agree in part with **SEN. DOHERTY**, but this bill should go to the Senate floor for debate and must go through "never, never land" (the House).

SEN. DOHERTY. For the record, the diminishment of standards and the attempt to prove in pleadings the details required, impairs Montanans' abilities to bring these actions. The necessary requirements are already in the law. These fraud requirements are not required for any other area in Montana. I don't believe plaintiff's attorneys bring these cases lightly, and I believe it's going to be rolled through.

SEN. ESTRADA. I agree with **SEN. DOHERTY**, and am concerned by the Majority Leader telling us not to do complex bills at the last minute, and then doing so himself. I have concerns and questions to be answered.

SEN. BISHOP. Let's do this. We're being paid to study this matter now.

SEN. DOHERTY. The securities industry knew about this federal act for over a year, so I don't understand the lateness of the LC number and the bill request. **CHAIRMAN CRIPPEN.** Obviously this was bi-partisan at the federal level, as both Senators Baucus and Burns supported it, even after the President vetoed it.

SEN. BISHOP. If the same criteria holds for other complex bills presented at the 11th hour, let's kill SB 374, too. I believe this bill deserves to go to the Senate.

Vote: **SEN. BISHOP'S MOTION THAT SB 382 DO PASS AS AMENDED CARRIED IN A ROLL CALL VOTE (6-4).**

THE COMMITTEE RECESSED AT 12 NOON AND RECONVENED AT 12:15 P.M.

EXECUTIVE ACTION ON SB 374

Amendments: sb037402.avl (EXHIBIT #13)

Motion: **SEN. HOLDEN MOVED TO AMEND SB 374 - sb37402.avl.**

Discussion: **SEN. HOLDEN.** There are getting to be more and more social security numbers than names on more and more documents. **CHAIRMAN CRIPPEN.** Some people don't have social security numbers, as they are not required by law, but they are required to have a TIF.

SEN. HALLIGAN. If several people have the same name, this will be a problem, so I oppose the motion.

CHAIRMAN CRIPPEN. The Department of Fish, Wildlife and Parks felt we would have a problem. The Chief of Enforcement said about 500 people were disqualified, and their privileges were suspended. He said the Department tried to match dates of birth with names, but if these are not identical, there won't be a match. He said they also had two people with the same name, and the same date of birth who were not included in the drawing, and were really angry.

Vote: SEN. HOLDEN'S MOTION TO ADOPT THE AMENDMENTS FAILED WITH ALL MEMBERS VOTING NO EXCEPT SENATORS HOLDEN AND ESTRADA WHO VOTED AYE.

Motion: SEN. ESTRADA MOVED AMENDMENTS sb037404.avl BE ADOPTED (EXHIBIT #14).

Discussion: Valencia Lane. The Department had stricken the 30-day time-line in Sections 47 and 75, but they received a letter from Judge John Larson to reinsert the time-line. Mary Ellen Wellbank. This was stricken because of a January 2, 1997 decision of the Supreme Court. Federal audit standards require that we move cases within 45 days, and are not meant to be interpreted as a due process requirement, but the Supreme Court interpreted it as mandatory. Forty-five days, however, is too fast when we have motions and continuances. I am against even doing six months for good cause, as it puts the state at liability. In one case that is four years old, the custodial parent was barred from collecting \$75,000 in back child support from the non-custodial parent.

SEN. BARTLETT explained amendments sb037404.avl. Valencia Lane. This is addressed in Judge Larson's letter. Mary Ellen Wellbank. The twenty-days refers to amendments 2, 3 and 4. There are no federal standards for this.

SEN. HOLDEN. We are talking about due process, right? And the Department will be holding up people's lives while they consider what is to be done. Mary Ellen Wellbank read from the federal requirements.

SEN. HALLIGAN. No retroactivity is initiated in amendments 2, 3 and 4. Amendment 1 could possibly be retroactive. What if income withholding were delayed six months? Amendment 1 is establishment of an order; amendments 2, 3 and 4 are merely income withholding on existing debt.

Vote: SEN. ESTRADA'S MOTION THAT THESE AMENDMENTS BE ADOPTED CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS DOHERTY, BARTLETT, HALLIGAN, MCNUTT AND JABS.

Motion: VICE CHAIRMAN GROSFIELD MOVED TO ADOPT sb0237401.asf.

Discussion: VICE CHAIRMAN GROSFIELD. Amendment 1 strikes "minimum"; amendment 2 corrects language that was too wide open;

amendment 3 deals with adoption of rules; amendment 4 gives guidance; amendment 5 gives the Department rule-making authority, Sections 1-15. For example, if one had a reasonably friendly settlement, why should it have to go through the Department?

Valencia Lane. On page 2, the two references to Sections 1-11 should be changed to Sections 1-015.

SEN. BARTLETT. What is the reason for extension of time for seasonal or temporary 'employers' or 'employees' in Subsection (c)? **VICE CHAIRMAN GROSFIELD.** Subsection (b) really goes with 6 through 9 and Subsection (3) goes with 10 and 11. **Mary Ann Wellbank.** 1 through 5(a), (b) are fine. 5(c) and 6 are a problem as the time-line is very strict and seasonal employees are very difficult to catch. 5(d) is confusing as it is in the 1991 law, and in subsequent withholding it is required to go through DPHHS unless the judge determines otherwise. So, I don't believe this amendment is necessary, and it's also confusing. 5(e) is your decision, and 5(f) is okay.

{Tape: 2; Side: B; Approx. Time Count: #36.6; Comments: 12:47 p.m..}

Motion/Vote: VICE CHAIRMAN GROSFIELD AMENDED HIS MOTION TO ELIMINATE 5(c), 5(d), AND 5(e). THE MOTION CARRIED UNANIMOUSLY.

Discussion: VICE CHAIRMAN GROSFIELD. I will not offer amendments on 6-9.

Motion: VICE CHAIRMAN GROSFIELD MOVED TO STRIKE THE ENTIRE SUBSECTION(6) ON PAGE 12, LINES 27-29.

{Tape: 3; Side: A; Approx. Time Count: #40.4; Comments: 12:52 p.m..}

Discussion: Mary Ann Wellbank. The current section, as written, is permissive.

CHAIRMAN CRIPPEN. I have a problem with striking this out in that the problem is the employer's, not the employee's

Vote: VICE CHAIRMAN GROSFIELD'S MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS CRIPPEN, JABS AND MCNUTT WHO VOTED NO.

Motion: VICE CHAIRMAN GROSFIELD MOVED TO ADOPT 1, 2, AND 3 OF THE PROPOSED AMENDMENTS.

Discussion: Mary Ann Wellbank. Name, address, and social security number are required under federal law. Adding the date of birth is good, but I don't know if it is required. **VICE CHAIRMAN GROSFIELD.** I will forget about 1, 2 and 3. Amendments 4-10 go to the same issue. I don't want this information going to just any state or state agency without just as good a confidentiality measure. **CHAIRMAN CRIPPEN.** You don't find this

a safeguard? **Mary Ann Wellbank.** We could live with it, if you said U.S.C. 651 et seq, we would then be in compliance with federal regulation. We think the Department of Revenue would put this information under new hires, and use it for their own purposes, so you could add the Department of Revenue. How much someone owes and to whom is already public information. This case processing center only has information on support and not on case records, and no confidential information will be disclosed.

Motion/Vote: VICE CHAIRMAN GROSFIELD AMENDED HIS MOTION TO INCLUDE U.S.C. 651 ET SEQ AND KEEP THE CONFIDENTIALITY LINE, AND ADD TO SUBSECTION (4), "THE STATE DEPARTMENT OF REVENUE". THE MOTION CARRIED UNANIMOUSLY.

Motion: VICE CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENT 11.

Discussion: **Mary Ann Wellbank.** I think the banks are comfortable with the bill, and they didn't offer any amendments when it was drafted.

Vote: VICE CHAIRMAN GROSFIELD'S MOTION TO ADOPT AMENDMENT 11 CARRIED UNANIMOUSLY.

Motion: VICE CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENT 12.

Discussion: **Mary Ann Wellbank.** The Department is okay with this.

Vote: VICE CHAIRMAN GROSFIELD'S MOTION TO ADOPT AMENDMENT 12 CARRIED UNANIMOUSLY.

Discussion: **Mary Ann Wellbank.** The Department is okay with the intent of amendment 13, but you need to change "obligee" to "obligor".

Motion/Vote: VICE CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENT 13 FOR PURPOSES OF CLARIFICATION AND TO CHANGE "OBLIGEE" TO "OBLIGOR." THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. MIKE HALLIGAN MOVED SB 374 DO PASS AS AMENDED. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS GROSFIELD, BARTLETT, AND DOHERTY WHO VOTED NO.

SENATE FINANCE & CLAIMS

Page 5

BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ---- DATE READ

HB0584	KNOX, DICK	CREATING AN ORPHAN SHARE SPECIAL REVENUE ACCOUNT							
	3/28	4/08		CONCUR AS AMENDED	4/11	VOTE: 13-4			4/11
HB0594	DEBRUYCKER, ROGER	ELIMINATE BOARD OF PASSENGER TRAMWAY SAFETY AND ASSOCIATED LAWS							
	3/27	4/08		CONCUR	4/8	VOTE: 17-0			4/09
HB0610	GRADY, ED	DOT FUNDING STUDY COMMISSION							
	3/28	4/08		CONCUR AS AMENDED	4/11	VOTE: 12-5			4/12
HB0615	COBB, JOHN	INTERIM STUDY COMM TO OVERSEE STUDY OF SOCIOECONOMIC IMPACTS OF GAMBLING							
	4/09	4/11		CONCUR	4/11	VOTE: 11-6			4/11
HJ0024	SOFT, LOREN	LEGISLATIVE CONSENT FOR CHAPEL AT WOMEN'S PRISON, CHURCH AT MDC AND MSH							
	3/28	4/08		CONCUR	4/8	VOTE: 16-1			4/09
SB0002	HOLDEN, RIC	REVISE, CLARIFY, AND CONSOLIDATE LAWS GOVERNING WORK PROGRAMS FOR INMATES							
	3/15	3/20		COM RPT - BCC	3/20	VOTE: 16-1			3/20
SB0019	GAGE, DELWYN	GENERALLY REVISING STATE GOVERNMENT BUDGETING LAWS							
	1/20	1/30		PASS AS AMENDED	1/30	VOTE: 15-0			1/31
SB0035	JENKINS, LOREN	BUDGET PERFORMANCE STANDARDS							
	1/03	1/09		PASS AS AMENDED	1/10	VOTE: 17-0			1/13
SB0109	HOLDEN, RIC	GENERAL CLARIFICATION OF CORRECTIONS STATUTES							
	3/15	3/20		COM RPT - BCC	3/20	VOTE: 16-1			3/20
SB0267	KEATING, THOMAS	REVISING RIT FUNDING STRUCTURE							
	2/03	2/17	3/6 3/10 3/12 3/14	TABLED ON	03/21	VOTE: 17-0			
SB0374	HARGROVE, DON	REVISE CHILD SUPPORT LAWS TO COMPLY WITH FEDERAL REQUIREMENTS AND LAW							
	2/25	3/06	3/11 3/13 3/14 3/18 3/20	PASS AS AMENDED	3/21	VOTE: 11-6			3/22

all dates checked 3/6 - 3/21 - LT

Amendments to Senate Bill No. 374
First Reading Copy (white)

Requested by Senator Doherty
For the Committee on Judiciary

Prepared by Valencia Lane
February 20, 1997

~~2-21-97~~
SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 2-21-97
JKA NO. 88374

adopt

1. Title, line 26.
Following: "87-1-102,"
Insert: "87-1-108,"

adopt

2. Page 11, line 30.
Following: "form or"
Insert: ", at the option of the employer,"
Following: "equivalent"
Strike: "as may be approved by the department"
Insert: "or any other format agreed to by the department"

- ~~3.~~ Page 12, line 18.
Following: "each"
Strike: "day"
Insert: "employee"

adopt

4. Page 12, line 25.
Following: "employee"
Strike: "or contractor"

adopt

5. Page 13, lines 25 through 30.
Following: "means" on line 25
Strike: remainder of line 25 thr
Insert: ": (i) a depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1813 (c);
(ii) an institution-affiliated party, as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813 (u);
(iii) any federal credit union or state credit union, as defined in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752, including an institution-affiliated party of such a credit union, as defined in section 206 (r) of the act, 12 U.S.C. 1786 (r); and
(iv) any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in the state"

- ~~6.~~ Page 21, lines 23 and 24.
Following: "spousal support" on line 23
Strike: remainder of line 23 through "support" on line 24

- ~~7.~~ Page 45, line 4.
Following: "companies,"
Insert: "and"
Following: "institutions"

Exhibit # 1 - a thru d
SB 374 20+ pages
The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P.O. Box 201201
Helena, MT 59620-1201
Phone # (406)444-4774

Amendments to Senate Bill No. 374
First Reading Copy (white)

Requested by Senator Grosfield
For the Committee on Judiciary

Prepared by Valencia Lane
February 20, 1997

1. Page 12, line 18.

Strike: "\$24"

Insert: "\$3"

Strike: "day"

Insert: "employee"

2. Page 12, line 21.

Strike: "\$495"

Insert: "\$25"

3. Page 12.

Following: line 24

Insert: "(d) all fines collected under this section must be
deposited in the state general fund."

4. Page 16, line 19.

Following: "(2)"

Strike: "(a)"

5. Page 16, lines 21 and 22.

Strike: subsection (b) in its entirety

6. Page 45, line 29.

Strike: "[, public entity,]"

7. Page 108, line 30 through page 109, line 4.

Strike: section 102 in its entirety

Renumber: subsequent sections

Amendments to Senate Bill No. 374
First Reading Copy (white)

Requested by Senator Holden
For the Committee on Judiciary

Prepared by Valencia Lane
February 20, 1997

1. Title, line 26.

Following: "61-5-107,"

Insert: "AND"

Following: "87-1-102,"

Strike: "87-2-106, AND 87-2-202,"

2. Page 106, line 15 through page 108, line 11.

Strike: sections 98 and 99 in their entirety

Renumber: subsequent sections

SENATE BILL NO. 374
HOUSE NO. 18
2-21-97
SB 374

Amendments to Senate Bill No. ~~571~~
First Reading Copy (white)

Requested by Senator Estrada
For the Committee on Judiciary

Prepared by Valencia Lane
February 20, 1997

1. Page 51, line 13.

Following: "~~20 days~~"

Insert: "be scheduled within 20 days,"

2. Page 51, line 14.

Following: "methods"

Insert: ", "

3. Page 52, line 26.

Strike: "The"

Insert: "Within 20 days of the hearing, the"

4. Page 81.

Following: line 7

Insert: "(7) In a case initiated because an arrearage has accrued or because additional income is being withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to withhold income, must be informed of the hearing decision on whether income withholding will take place."

Renumber: subsequent subsection

**MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE**

ROLL CALL

DATE _____

2-21-97

[illegible]

SEN:1995
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CS-09

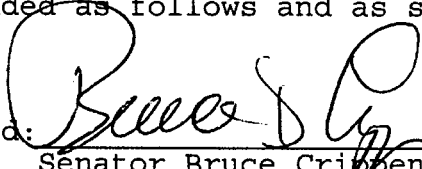


SENATE STANDING COMMITTEE REPORT

Page 1 of 5
February 22, 1997

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill 374 (first reading copy -- white), respectfully report that Senate Bill 374 be amended as follows and as so amended do pass.

Signed: 
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 26.
Following: "87-1-102,"
Insert: "87-1-108,"

2. Page 2, line 1.
Following: "11"
Insert: ", 12, 13, 14, and 15"

3. Page 2, line 2.
Strike: "at a minimum"
Strike: ":"

4. Page 2, line 3.
Strike: "(1)"
Strike: "not provided for in [sections 1 through 11];"

5. Page 2, line 4.
Strike: "(2)"

6. Page 2, line 6.
Following: the second "information"
Insert: "and should adopt rules that minimize the personal intrusiveness of the requested information and that minimize the costs to the department, employers, and employees in response to any difficulties in obtaining the information"

7. Page 5, line 15.
Following: "11"
Insert: ", 12, 13, 14, and 15"
Following: "."
Insert: "Rules must be drafted, adopted, and applied in a manner that:

 Amd. Coord.
517 Sec. of Senate

420944SC.SRF

- (a) minimizes the personal intrusiveness on the employer or employee of any requested information;
- (b) minimizes the costs to the department and any employer or employee with respect to obtaining and submitting any requested information; and
- (c) adequately provides for the confidentiality and security of any employer or employee information that the department gathers under [sections 1 through 11, 12, 13, 14, and 15]."

8. Page 11, line 30.

Following: "form or"

Insert: ", at the option of the employer,"

Following: "equivalent"

Strike: "as may be approved by the department"

Insert: "or any other format agreed to by the department"

9. Page 12, line 18.

Strike: "\$24"

Insert: "\$3"

Following: "each"

Strike: "day that"

Insert: "employee for whom"

10. Page 12, line 21.

Strike: "\$495"

Insert: "\$25"

11. Page 12, line 25.

Following: "employee"

Strike: "or contractor"

12. Page 12, lines 27 through 29.

Strike: subsection (6) in its entirety

13. Page 13, line 1.

Strike: "(1)"

14. Page 13, line 5.

Strike: "(a)"

Insert: "(1)"

Following: "any"

Strike: "other"

Insert: "agency of another"

Strike: "appropriate"

15. Page 13, line 6.

Following: "welfare"

Insert: "pursuant to 42 U.S.C. 651, et seq., and with
confidentiality provisions equal to or greater than those
provided by the department"

16. Page 13, line 7.

Strike: "(b)"

Insert: "(2)"

17. Page 13, line 10.

Strike: "(c)"

Insert: "(3)"

18. Page 13, line 11.

Strike: "(d)"

Insert: "(4)"

19. Page 13.

Following: line 11

Insert: "(5) the department of revenue."

20. Page 13, lines 12 through 17.

Strike: subsections (e) and (2) in their entirety

21. Page 13, lines 25 through 30.

Following: "means" on line 25

Strike: remainder of line 25 through "32-5-102" on line 30

Insert: ": (i) a depository institution, as defined in section
3(c) of the Federal Deposit Insurance Act, 12 U.S.C.
1813(c);

(ii) an institution-affiliated party, as defined in
the Federal Deposit Insurance Act, 12 U.S.C. 1813(u);

(iii) any federal credit union or state credit union,
as defined in section 101 of the Federal Credit Union Act,
12 U.S.C. 1752, including an institution-affiliated party of
such a credit union, as defined in section 206(r) of the
act, 12 U.S.C. 1786(r); and

(iv) any benefit association, insurance company, safe
deposit company, money market mutual fund, or similar entity
authorized to do business in the state"

22. Page 14, lines 12 through 14.

Following: "number." on line 12

Strike: the remainder of line 12 through line 14

23. Page 15, line 17.

Following: "action"

Insert: "under this section"

Following: "section"

Insert: "as long as the action is reasonable"

24. Page 16, line 11.

Following: "commensurate employment"

Insert: "available within a reasonable range of the obligor's
area of residence"

25. Page 16, line 19.

Following: "(2)"

Strike: "(a)"

26. Page 16, lines 21 and 22.

Strike: subsection (b) in its entirety

27. Page 21, lines 23 and 24.

Following: "spousal support" on line 23

Strike: remainder of line 23 through "support" on line 24

28. Page 45, lines 4 and 5.

Following: "companies," on line 4

Insert: "and"

Following: "institutions" on line 4

Strike: ", and all other entities maintaining customer data
bases"

29. Page 69, line 14.

Strike: "8"

Insert: "7"

30. Page 106, line 12.

Following: "this title,"

Insert: "the administrative authority or"

31. Page 106.

Following: line 13

Insert: "Section 98. Section 87-1-108, MCA, is amended to read:

"87-1-108. Suspension of privileges for failure to comply with citation or sentence. (1) A person who fails to comply with the terms of a court citation, the terms of an administrative suspension, or fails to fulfill the obligations of any court-imposed sentence for a wildlife violation under this title, resulting in the issuance of a warrant for his the person's arrest, shall surrender any current hunting, fishing, and trapping licenses to the department, and his the person's

privileges to hunt, fish, and trap and to hold a valid license to hunt, fish, or trap are suspended until the terms of the court citation or sentence are satisfied.

(2) A person who loses ~~his~~ the person's privileges under this section or through an administrative process must be notified by the department or by the administrative authority in person or by mail. A person who hunts, fishes, traps, purchases licenses, or refuses to surrender any current hunting, fishing, or trapping license in violation of this section is guilty of a misdemeanor and subject to the penalties prescribed in 87-1-102.""

Renumber: subsequent sections

-END-

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE & CLAIMS

Call to Order: By CHAIRMAN CHUCK SWYSGOOD, on March 6, 1997, at 8:05 a.m., in Room 108.

ROLL CALL

Members Present:

Sen. Charles "Chuck" Swysgood, Chairman (R)
Sen. Thomas F. Keating, Vice Chairman (R)
Sen. Larry Baer (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. James H. "Jim" Burnett (R)
Sen. B.F. "Chris" Christiaens (D)
Sen. Eve Franklin (D)
Sen. Loren Jenkins (R)
Sen. Greg Jergeson (D)
Sen. John "J.D." Lynch (D)
Sen. Dale Mahlum (R)
Sen. Ken Miller (R)
Sen. Arnie A. Mohl (R)
Sen. Linda J. Nelson (D)
Sen. Mike Taylor (R)
Sen. Daryl Toews (R)
Sen. Mignon Waterman (D)

Members Excused: None

Members Absent: None

Staff Present: Taryn Purdy, Legislative Fiscal Division
Sharon Cummings, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 7, 2/25/97; HB 139,
2/25/97; SB 374, 2/25/97
Executive Action: HB 7, BCC

HEARING ON HB 7

Sponsor: REP. ERNEST BERGSAGEL, HD 95, MALTA

Proponents: John Tubbs, DNRC

CHAIRMAN SWYSGOOD I have a real problem with this part of the bill and you have just solidified that concern for me. If you don't know what to put in an RFP, how will you know who to go to in the technology field to get the information without having more than one firm in the process? **Mr. Specter** Frequently, there is more than one solution to an information technology problem. We seek the lowest cost and best solution. We don't always know the best way to get to the solution so we talk with service providers who can help us think the issues through. The RFP process adds from 6-12 months to this process.

CHAIRMAN SWYSGOOD I can't believe a technology firm won't say their product is the best. You may be getting only one or two suggestions and you are not doing the taxpayers justice by not allowing everyone with these capabilities to bid in an RFP process. **Mr. Specter** Adding 12 months of frustration and difficulty to an complex process does not serve the state either.

{Tape: 1; Side: B; Approx. Time Count: 9:20; Comments: None.}

Closing by Sponsor:

REP. SWANSON Direct negotiation will give the state the possibility of knowing if a vendor can provide the service, understand the problems and answer the questions. I think direct negotiation is a great idea and hope you will give the department two years to give it a try and report back to us. Remember that the taxpayers of Montana pay the bill when a vendor sues the state for damages. We should allow vendors a way to stop the process but not allow them to sue the state for lost damages. It is difficult for government to find ways to be more efficient and run more like a business. I believe this bill is a good step in the right direction by giving the department some tools to be more business like, save money and be more efficient.

{Tape: 2; Side: A; Approx. Time Count: 9:25; Comments: None.}

HEARING ON SB 374

Sponsor: SEN. DON HARGROVE, SD 16, BOZEMAN

Proponents: Mary Ann Wellbank, Department of Public Health and
Human Services
John Larson, Missoula District Judge

Opponents: None

Opening Statement by Sponsor:

SEN. DON HARGROVE, SD 16, BOZEMAN SB 374 has had a hearing in the Senate Judiciary Committee and is directly required by the personal responsibility and work opportunity reconciliation act otherwise known as the federal welfare reform act. Upon it rides

our federal child support and welfare money. This is to get tough on deadbeat dads and there are many unpleasant things in it. There are items directly related to the Families Achieving Independence in Montana (FAIM) program that was passed by the 1995 legislature.

{Tape: 2; Side: A; Approx. Time Count: 9:31; Comments: None.}

Proponents' Testimony:

Mary Ann Wellbank, Department of Public Health and Human Services (DPHHS) Ms. Wellbank gives an overview of the bill and (EXHIBIT #7) There is some clean-up language in the bill that is not federally driven. The blue book (EXHIBIT #8) is a summary of federal information. DPHHS is interested in working with you on this so it works for Montana.

John Larson, Missoula District Judge I am in support of the bill but have several concerns and would like to work with the subcommittee to clarify how we work. This bill impacts all our cases in child support, abuse and neglect, juvenile and many other cases we deal with. We would like to lessen confrontations with the Child Support Enforcement Division.

Opponents' Testimony: None

{Tape: 2; Side: A; Approx. Time Count: 9:43; Comments: None.}

Questions From Committee Members and Responses:

SEN. KEATING Is there anything in SB 374 that is not mandated?
Ms. Wellbank Yes.

SEN. EVE FRANKLIN Do we have the flexibility to pick and choose what we want in this bill? Ms. Wellbank I don't feel we have any flexibility at all.

{Tape: 2; Side: A; Approx. Time Count: 9:46; Comments: None.}

Closing by Sponsor:

SEN. HARGROVE closes.

CHAIRMAN SWYSGOOD Members of the subcommittee to work on this bill are: SEN. KEATING, Chairman; SEN. BAER, SEN. WATERMAN, SEN. MAHLUM, SEN. JERGESON, SEN. HALLIGAN and SEN. HOLDEN.

{Tape: 2; Side: A; Approx. Time Count: 9:49; Comments: None.}

EXECUTIVE ACTION ON HB 7

Motion/Vote: SEN. LYNCH MOVES HB 7 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY. SEN. LYNCH will carry HB 7.

Exhibit # 7

SB 374

3 Ring Binder

The full exhibit is available from:

MT Historical Society Archives

225 North Roberts

P.O. Box 201201

Helena, MT 59620-1201

Phone # (406)444-4774

Section by

S

"An Act Implementing

the

Personal Responsibility

Reconciliation Act

Sponsored

At the R

SENATE BILL AND CLAIMS
EXHIBIT NO. 8
DATE 3/6/97
BILL NO. SB 374

Federal Reference Material Relative to

Montana SB 374

Sponsored by Senator Don Hargrove
at the Request of the Department

Implementing the Child Support Provisions of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)

Exhibit # 8 HB 374
Booklet
The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P.O. Box 201201
Helena, MT 59620-1201
Phone # (406)444-4774

Prepared by: Department of Public Health and Human Services
Child Support Enforcement Division
Mary Ann Wellbank, Administrator
K. Amy Pfeifer, Staff Attorney

**MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE**

ROLL CALL

DATE 3/6/97

NAME	PRESENT	ABSENT	EXCUSED
SEN. CHUCK SWYSGOOD, CHAIRMAN	✓		
SEN. TOM KEATING, VICE CHAIRMAN	✓		
SEN. LARRY BAER	✓		
SEN. TOM BECK	✓		
SEN. JIM BURNETT	✓		
SEN. B.V. "CHRIS" CHRISTIAENS	✓		
SEN. EVE FRANKLIN	✓		
SEN. LOREN JENKINS	✓		
SEN. GREG JERGESON	✓		
SEN. J. D. LYNCH	✓		
SEN. DALE MAHLUM	✓		
SEN. KEN MILLER	✓		
SEN. ARNIE MOHL	✓		
SEN. LINDA NELSON	✓		
SEN. MIKE TAYLOR	✓		
SEN. DARYL TOEWS	✓		
SEN. MIGNON WATERMAN	✓		

SEN:1997
wp.rollcall.man
CS-09

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

FINANCE & CLAIMS SUBCOMMITTEE ON SB 374

Call to Order: By CHAIRMAN TOM KEATING, on March 11, 1997, at 8:10 a.m., in Room 108.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Larry Baer (R)
Sen. Greg Jergeson (D)
Sen. Dale Mahlum (R)
Sen. Ric Holden (R)

Members Excused: Sen. Mignon Waterman (D)
Sen. Mike Halligan (D)

Members Absent: None

Staff Present: Taryn Purdy, Legislative Fiscal Division
Sharon Cummings, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 374, 2/25/97
Executive Action: None

HEARING ON SB 374

Proponents: George Bennett, Montana Banker's Association
John Larson, Missoula District Judge
SEN. DON HARGROVE, SD 16, BOZEMAN
John Cadby, Montana Banker's Association
Stuart Doggett, Montana Land Title Association

CHAIRMAN KEATING We'll go through this page by page, addressing amendments for each page. I'm going to allow public testimony and comments but I'd like them as concise and direct as possible. I want to allow as much input as possible so that we all get a good, full understanding of this.

SEN. LARRY BAER A very important case came down on February 5, 1997 regarding federal funding, federal mandates and their interaction. This was the Commonwealth of Virginia versus Riley, **SEN. BAER** gave a brief summary of the case.

SENATE FINANCE & CLAIMS SUBCOMMITTEE

March 11, 1997

Page 2 of 27

CHAIRMAN KEATING I would like to start with a general overview of the bill, as we go through I'd like to know what is part of the federal act and what is being proposed by DPHHS.

{Tape: 1; Side: A; Approx. Time Count: 8:16; Comments: None.}

Mary Ann Wellbank, Department of Public Health and Human Services (DPHHS) We were not aware of the decision that **SEN. BAER** refers to. We are required to conform to certain requirements for TANF or AFDC money, one of those requirements is child support enforcement. Without knowing too much about the decision, my inclination is to think that our state plan is our contract that guarantees we have an effective child support enforcement program. The federal government has told me that if we don't meet the requirements of the IV-D plan, which is the child support plan, they will cut funding of the IV-D program. If you have a non-compliant IV-D program, you can't meet the state's requirement for TANF funding and therefore that federal funding is removed. About \$52 million over the biennium is at risk. **Ms. Wellbank** explained the bill. In Senate Judiciary **SEN. LORENTS GROSFIELD** introduced amendments to clarify intent, limit rule making and give us the responsibility to waive the need for information against the personal intrusiveness of the information requested. Sections 47, 48 and 51 are not mandated by the federal government.

{Tape: 1; Side: A; Approx. Time Count: 8:32; Comments: None.}

Proponents:

George Bennett, Montana Banker's Association Banks are going to be under this bill as financial institutions as defined in the bill, payors as they will be paying interest to obligors and employers thereby subject to support orders and income withholding orders. Banks will be subject to new hire reporting and other obligations. Our major concern is orders: child support orders; income withholding orders; and orders for documents that originate outside the State of Montana. There are going to be small banks and small employers receiving legal process from outside Montana which may raise questions as to invalid or forged legal process. The process may direct payment to unauthorized persons or entities. It puts on the employers, payors, and financial institutions the obligation to determine the legal validity of the legal process. Since obligors may have families in many different states, the bill puts the burden on payors, employers, and financial institutions to sort out priorities between the various orders that have been issued in other states. We suggest adding a section which says that if a financial institution, payor, or employer in Montana is served with a form of legal process, they may respond to that through the department, in other words they may simply send that process with payment to the department, and let the department sort out the priorities and find out if the process is valid. Senate Judiciary amended out language that said if the process appeared

to be valid on its face, it would be honored. I don't know what the effect of that is. I don't know whether this would affect federal mandate or not. (EXHIBIT #1)

John Larson, Missoula District Judge We're supportive of the bill. My concern is with the central state registry. I think the central state registry decision making should be shared between judiciary, CSED and local clerks, therefore I'm suggesting an amendment. There is a new state wide property lien that's being created and we need to make sure that the counties know about it. We need a joint effort for Marriage and Divorce Act issues, to get decrees registered and child support coming as quickly as possible. There is nothing in the federal act that precludes this and I don't think CSED opposes it. I also have a couple of amendments for Sections 47 and 75 that deal with timelines. Montana Supreme Court has held unanimously that the Constitutional protection of due process apply to the way CSED handles it's cases. And while CSED feels that these timelines are crucial to that case, I think the Constitution is what's crucial. As you go through this bill you'll see a multitude of requirements on the obligors for timelines. In-person hearings are another issue to be addressed. In every other contested case proceeding under the Administrative Procedure Act it presumes hearings take place in person. If you look at the language in this bill, it's turned over and presumed that the hearing will be telephonic. As a district court judge, I have to sit in front of these people, I face them, I hear their stories, I see their kids. It is sometimes important for litigants to actually see the person who is making the decisions and who is testifying against them so that they can ask questions. I request an amendment so that the hearing could either be in person or telephonic and the parties could make the choice. Section 59 deals with district court clerks issuing an order for automatic withholding. Federal law requires that we do it without prior judicial hearing, there's a long standing court process, the District Court Temporary Order. It gets the order out, gives the parties the opportunity to come back to contest and is consistent with federal requirements. Judge Lankton and I sent a note to the Senate Judiciary Committee noting that many of the issues in this bill are outside the Federal Welfare Reform Act. The formula used for child support is very difficult, the State of Wisconsin has a brief, simple child support calculation that we strongly recommend be adopted. The last section of the bill is for access and visitation program grants I've provided a copy of the Missoula visitation guidelines and Montana Supreme Court decision material. (EXHIBIT #2)

SEN. DON HARGROVE, SD 16, BOZEMAN We need to look at what we are trying to do, which is to make people responsible for their own actions. We should look at this as if there was no mandate, what are we going to do to force these people to be responsible and take the burden off the taxpayers? From that standpoint I think we should try to be as simple as possible. For all practical purposes this is paid for completely by federal funds, if we

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start adjusting process we might get into General Fund. This is intrastate, all of the states in the country are struggling with this, we don't want our dead beats to go to other states and therefore escape their responsibilities. We also don't want to become a haven for those from other states, we don't want to make it so it won't be easy to find them or make them responsible for their actions.

{Tape: 1; Side: A; Approx. Time Count: 8:50; Comments: None.}

John Cadby, Montana Banker's Association Colorado solved the problem Judge Larson refers to, they developed a central electronic registry data bank for all liens which can be accessed on the Internet. Two employees work on this public enterprise run by the private sector. I think you can see the need for a central data bank to serve all the counties, district judges and business people throughout the state. This might be one solution to the communication problem, intrastate as well as interstate. (EXHIBIT #3) handed out.

Stuart Doggett, Montana Land Title Association There is concern with Section 48, if this exception is passed into law it would make a final administrative order of the department forcible to the same degree as a district court order without filing the docket and the order of district court. We feel this is unfair to the purchasers because as it is not filed or docketed in district court as is required for other means. A purchaser might move into his home to find that he really does not own it. Here is a letter from Richard Shors. (EXHIBIT #4)

{Tape: 1; Side: B; Approx. Time Count: 8:55; Comments: None.}

Questions from Committee Members:

SEN. DALE MAHLUM On Section 9, do we have to do this reporting when hiring high school students for the summer? **Ms. Wellbank** You would have to report every single person that met the requirements. As an employer, you would be allowed to deduct \$5.00 from the employee's wages.

SEN. MAHLUM If that is the case, what are we doing to these people that are 18 and 19 years old, are we putting them into a security bank someplace so the FBI can know what their names are or something like that? I am scared of your bill. **Ms. Wellbank** There are confidentiality provisions related to the new hiring of an employee, Section 10 addresses information and records disclosure. Only specified child support type agencies would have access to this information.

SEN. BAER How much money are we receiving from the federal government directly to fund this program? **Ms. Wellbank** They are not giving us extra money but everything they give us comes with a 66% federal match, we need to match whatever it costs us in the fiscal note and the feds give us 66% to go along with it.

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SEN. BAER What do we use for match? **Ms. Wellbank** The Child Support Enforcement Division (CSED) currently receives some General Fund money, 34% state special revenue which is matched with 66% federal. We generate the state special revenue by collecting. When people go on welfare they assign their child support benefits to the state and instead of getting child support they get welfare and we keep any child support we've collected for the period of time they're on welfare. We're expected to increase collections and therefore increase what goes into the state special fund, at the same time there are expenditures associated with the development of the system.

{Tape: 1; Side: B; Approx. Time Count: 9:03; Comments: None.}

SEN. BAER Why can't we fund from the existing funding you just outlined to initiate these programs to give proper notification and have proper interaction with other pertinent agencies and other people involved in facilitation of this new law? **Ms. Wellbank** There are a couple parts to your question. One has to do with funding, we get most of our funding from AFDC. Because of the success of FAIM the interface between child support and AFDC has dropped by 2,000 people in the past year. This means we're collecting less and less money and our state special revenue is pretty thin. Income withholding will result in getting these people and the money faster, which will generate more state special revenue. If we weren't to have this bill, we couldn't get any more state special revenue than we're already getting. The second part relates to some of the things that will cost money, for example in-person hearings. We've always done telephonic hearings and want it clear in the law that it should be telephonic. If we have to go to in-person procedures, we don't have enough state special revenue to cover it and it would cause a General Fund impact.

SEN. BAER What you're saying is if a hearing is required we're going to have to fund that situation by way of the General Fund because of this bill? **Ms. Wellbank** No, I'm not saying that. We need to comply with the due process requirements in the constitution and we're very conscientious about that. But the constitution requires a hearing, it does not say in-person hearing, it could be a telephonic hearing. We conduct our hearings by telephone and that shouldn't interfere with a person's opportunity for due process, they have an opportunity for a de novo hearing if they feel they were prejudiced by the telephonic hearing and that would be in person.

SEN. BAER Whether or not a telephonic hearing is an adequate provision of due process is a question we cannot decide here. It may be a problem. You mentioned earlier that this is a federal mandate and if we don't comply with this mandate we may lose millions of dollars of federal funding. Are you talking about the 66% that we would receive for this program or other federal funding we already receive? **Ms. Wellbank** I'm talking about the federal funds of approximately \$6 million per year for CSED. If

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CSED can't meet it's requirements, the funding from the federal welfare program is also in jeopardy, that is about \$40 million over the biennium. There is a letter in the blue book which talks about how the building blocks for this program will tumble and jeopardize federal funds.

SEN. BAER I have to differ with you on that. **Ms. Wellbank** We have not had the opportunity to look over that opinion and I'd like to research it.

SEN. BAER I'd strongly suggest you do so and base your presumptions and opinions on the current case. We are not inclined to reject federal mandates if we find them necessary and beneficial to the State of Montana which this bill very well may be in it's final version. We can't impose impediments to our decisions here based upon speculation as to what the federal government can and cannot do. I hope we can come up with a bill that will allow us to address the problem with these non-paying spousal and child support situations, but we have to give objective information in the process. **Ms. Wellbank** My job is to convey what I know. We've done a lot of research on this, we've talked to the feds but it isn't my job to tell you what to do or how do it. I respect what you're saying, I've had those same concerns myself.

SEN. BAER Is the FAIM program a medicaid program? **Ms. Wellbank** The FAIM program, Families Achieving Independence in Montana, is the old AFDC program.

SEN. BAER It's the AFDC program and is funded by medicaid, right? **Ms. Wellbank** No, some of these people are eligible for medicaid benefits, but we're talking about welfare benefits here.

CHAIRMAN KEATING The FAIM program is funded by the feds with a 28-72 match. 28% is General Fund paid by the state to match those federal funds. The benefits in FAIM are paid to AFDC recipients and then child support enforcement seeks recovery of those AFDC benefits. What amount of recovery does your department try to achieve from those FAIM benefits? **Ms. Wellbank** I don't know.

CHAIRMAN KEATING An AFDC family can get over \$1,000 in support; rent, utilities, cash and food stamps. In addition they get medical coverage that's the equivalent of \$300 or \$400 a month in premiums. What part of these benefits does your department try to recover? **Ms. Wellbank** Our department recovers the child support that's assigned to the state which is the cash part of the benefits. We establish medical support orders which, according to our figures show we probably save medicaid over a billion dollars by going after the obligated parent. We put out an RFP the other day that would allow us to enroll children in a group policy with obligated parents buying through this RFP for about \$80. If this works, it should help get people off medicaid. We don't recover the cash paid on medicaid.

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CHAIRMAN KEATING Your recovery then becomes your state special which you use for the 66-34% match. **Ms. Wellbank** Yes, and in addition to that we get federal incentives based on our AFDC collections.

CHAIRMAN KEATING Our percentage has been quite high over the years, so we get a premium out of the feds, don't we? The other thing that you mentioned was that FAIM was a successful program and there appears to be fewer and fewer recipients. Are the numbers going down? **Ms. Wellbank** They are going down substantially. It has been very successful.

CHAIRMAN KEATING You have diminishing recovery because of the diminishing demand, and now we have fewer and fewer delinquent fathers. With people leaving FAIM you're looking at a diminishing return to use for match, at the same time you have increased expense because of these new requirements. **Ms. Wellbank** That is true. We think the income withholding bill will generate more state special revenue because we'll be able to get that money much quicker.

CHAIRMAN KEATING What is our current unpaid debt? **Ms. Wellbank** Approximately \$160 million, this money is owed to families in Montana and other states. I believe this is an artificially high number because some people default a high amount.

CHAIRMAN KEATING Can these receivables be used for match? **Ms. Wellbank** No, and not all of it is AFDC receivables.

CHAIRMAN KEATING Now the committee has some idea what the funding is in this situation. We get 70% match in the FAIM program and collections become match money. We're collecting federal money to use as match for more federal money. This is taxpayer dollars and we have to treat it efficiently. **Ms. Wellbank** Of the money collected we need to return the federal portion to the feds.

SEN. BAER Could the funding for uniform notification come out of the 66% match, or is all that money specifically designated for certain purposes? **Ms. Wellbank** The federal money can only be designated for these purposes, did you have something particular in mind about the requirements? I think you're talking about telephonic hearings, is that correct?

SEN. BAER Not necessarily. Let's use **Judge Larson's** concern about uniform interaction between your department and the district court for enforcement of these laws, which I think is essential. I believe you are saying that creating a system to accomplish that would have to be done with moneys outside of the federal funding and more match for this program that you propose. Is that what you're saying? **Ms. Wellbank** I don't think that I am. In this bill it requires a central registry of all orders, whether they're issued by our division or by the district court, which we don't have now and I think everyone would agree Montana

really needs that. That is in this bill, it is part of the fiscal note, it will cost money but we feel that the other income generating areas that come with the bill will help us raise the state special revenue funds. We believe we'll identify more money faster with income withholding and the financial institution data matches.

SEN. BAER You're saying you think this program could be funded by other special revenue funds that come in by way of this bill, other than the 66% and the 34% state matching funds. You think you can provide enough for such a unification of notification as proposed by **Judge Larson**. **Ms. Wellbank** One of the purposes of this bill is to get that unified central registry, but the only funding that I know of that complies with federal requirements is the 34% state funds, whether General Fund or state special revenue. As long as we meet and comply and don't go beyond the federal requirements, we could get the 66% federal match.

SEN. BAER Are you now saying that we could use part of the 34% matching funds to fund a program that would satisfy the district courts as to the necessary unification of information and interaction, or can we not use part of the 34%? **Ms. Wellbank** If we're talking about the bill and if we conform to what's provisioned in the bill, yes we can use the 66% match of federal funds. If we're talking something beyond the scope of the bill, then there might not be a federal match available.

CHAIRMAN KEATING The 34% match can be used for funding whatever the department wants to buy and is available for expenditures. Can the match money be used for such a program as proposed today? We don't know the extent it will be or how it will be facilitated.

SEN. BAER: I'm concerned about the necessity for such a program. I want to make sure that a program to unify interaction is properly done and properly funded. I want to know where that money will come from.

{Tape: 1; Side: B; Approx. Time Count: 9:36; Comments: None.}

REVIEW OF SB 374

CHAIRMAN KEATING Section 1 is a new section, current law is not in these definitions? **Amy Pfeifer, DPHHS** There are definitions used in other parts of the code, but they're not necessary to the new sections.

CHAIRMAN KEATING This says that you should adopt rules to minimize the personal intrusiveness of the requested information along with minimized costs to the employers and employees in response to obtaining information. The Judiciary Committee put this in, can DPHHS comply? **Ms. Wellbank** Yes.

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SEN. GREG JERGESON In your testimony you talked about obligated parent, but it is obligee and obligor in the definitions. Is there a technical editing reason why you would use obligee instead of obligated parent? Sometimes the ee and the or confuse people. **Ms. Wellbank** The obligor is the same as the obligated parent who owes the court. Obligor is the legal term, when I testified I used obligated parent because I think it's easier to understand. The obligee is the person to whom support is owed and that's another legal term so we used obligor and obligee throughout.

CHAIRMAN KEATING Section 2, Child Support Information and Processing Unit, any comments? **Judge Larson** I suggest striking "upon request" on page 4, line 17 and insert "this information must be shared with the courts of this state."

CHAIRMAN KEATING Does the department have any comment on this? **Ms. Wellbank** I don't think it's a problem mandating it be shared with the court, I am concerned about the amendment because it's also intended that it needs to be shared with the courts and agencies of other states.

Motion/Vote: SEN. BAER MOVES TO AMEND SB 374 BY STATING THIS INFORMATION MUST BE SHARED WITH THE COURTS OF THIS STATE AND, UPON REQUEST, MAY BE SHARED WITH CHILD SUPPORT ENFORCEMENT AGENCIES OF THIS AND OTHER STATES FOR THE PURPOSE ESTABLISHED ON PAGE 4, SECTION 2. THE MOTION CARRIED UNANIMOUSLY.

CHAIRMAN KEATING Anything else on page 5? **Judge Larson** I would like to strike lines 13-14, subsection A and insert the language on page 3 of my handout. (EXHIBIT #2)

CHAIRMAN KEATING Is Missoula County the only county that is affected by this? **Judge Larson** No, it's not, but it is the first one to hook up to their system, and so they have some technical background. The Supreme Court Administrator's Office has a common program for most of the other counties. Missoula County has a different system than most of the other counties.

Ms. Wellbank The reason we put the language about the department being ultimately responsible is because funding would come through our agency funding umbrella. Perhaps we could work with **Judge Larson** to formulate an amendment that would allow the clerks and judicial system input. Anytime you start creating a board to manage a system, it becomes more cumbersome. Our intent is to make this easy for everyone.

Judge Larson The federal act expressly allows making local registries.

CHAIRMAN KEATING Subsection A says the department is ultimately responsible for operation of the case registry, etc., and then afforded by the unit. Could we say subject to the case registry being jointly subject to the oversight of a committee and then

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list the representatives? **Ms. Wellbank** What guidance are you giving the department in "subject to the oversight"? Does that mean whatever is wanted by the majority? Statutory structure probably needs to be created for how the oversight would take place.

CHAIRMAN KEATING You say you want to work with them, so we have to say something in here to allow that participation. We should put in statute the people that are going to be involved so everyone has statutory recognition for participating in the case registry. **Ms. Wellbank** Could we say the department shall consult with these groups of people in developing it? My only concern is that more guidance is needed as to what your intention is. Do they direct the system development, the cost associated with it, do we all have to come to agreement, or who has the final say?

SEN. MAHLUM What this amendment says is that you still do everything and they're an advisory council. They're the ones that see these parents and kids. These people are their customers and they should have some more input to your department. **Ms. Wellbank** I don't disagree. The fiscal note was developed as a result of communications between BDM, the Supreme Court Administrator and CSED. My concern is that the statutory language be very explicit as to what the department's role is. It looks like we don't know who is the final decision maker or how a final decision is made.

Judge Larson I think joint oversight will help us reach decisions that everyone is comfortable with. We want things that work for our clerks and CSED.

CHAIRMAN KEATING We can leave the language "the department is ultimately responsible" and insert "the case registry shall be operated jointly".

SEN. MAHLUM Is the problem with joint authority or joint facilitation of the process? **CHAIRMAN KEATING** I believe the final authority lies with the department. The courts are trying to get a statement that there will be cooperation between the department and court clerks. If we insert a subsection specifying who will be involved in joint oversight on the registry it will be clarified.

SEN. MAHLUM What does oversight mean? Are we dealing with the process or are we dealing with authority to oversee and make decisions? **Judge Larson** If problems develop we all come to the table and try to decide what the solution will be.

CHAIRMAN KEATING Let's go with that amendment and see how it fits. We can come back to it.

{Tape: 2; Side: A; Approx. Time Count: 10:00; Comments: None.}

Motion/Vote: SEN. MAHLUM MOVES TO AMEND SB 374 BY MOVING SUBSECTION B TO C AND INSERTING A NEW SUBSECTION B STATING OVERSIGHT OF THE CASE REGISTRY SHALL BE ACCOMPLISHED BY A JOINT COMMITTEE WITH ONE REPRESENTATIVE FROM EACH OF THOSE AREAS. THE MOTION CARRIED UNANIMOUSLY.

CHAIRMAN KEATING I'd like to know when we get to the section where the employer has to pay the child support if the employee fails. **Ms. Wellbank** That's been law since 1989, it is federally required that immediate income withholding must be ordered. This means any order, whether a person is delinquent or not, needs to be ordered unless there's some reason for an exemption.

CHAIRMAN KEATING Is it in the old language in this bill? **Ms. Pfeifer** It may or may not be, if we're not changing those sentences for other reasons, they're not here.

CHAIRMAN KEATING Section 6, distribution of payments. Is this distribution to the feds and the department? **Ms. Wellbank** This is distribution to families.

CHAIRMAN KEATING Is this the payment from the obligor? **Ms. Wellbank** Yes, it can be but most of the time it's the employers.

CHAIRMAN KEATING Sometimes FAIM is making the payments, is that right? **Ms. Wellbank** In those cases, FAIM is paying out AFDC money not child support, we still collect child support from the obligor and those are the payments we get to keep.

CHAIRMAN KEATING This has to be distributed to somebody. **Ms. Wellbank** Yes, these are cases where the obligee, the mother in most cases, is owed support. We collect it for her and pass it right out to her.

CHAIRMAN KEATING The mother in this case is not on AFDC. **Ms. Wellbank** Yes, we collect the support and pass it through. The obligated parent or the employer writes the check.

CHAIRMAN KEATING Do these funds go into an account? **Ms. Wellbank** The money goes into the state bank account, we process it and write a check, usually within 24 hours.

SEN. RIC HOLDEN I have a question on page 12, line 30, new hires. I'd like a summary of how that works in conjunction with the first 4 lines of page 13. The committee amended this section of the bill, and I'd like to know how you are going to deal with this. **Ms. Wellbank** The committee took the teeth out of the penalty but it does comply with federal requirements. An employer who doesn't report a new hire can get fined up to \$3.00.

SEN. HOLDEN Do we really need this? We've been told it's federal law but I've never been satisfied we need it at all. **Ms. Pfeifer** Page 18 of the blue book addresses this.

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SEN. JERGESON Is this section effective with only a \$3.00 fine?
Ms. Wellbank We're hoping employers will comply. I think most employers will because it's the law and takes them off the hook. We have employers in income withholding who fail to comply; we go after them for contempt and fine them for not complying.

CHAIRMAN KEATING I believe this was amended in Senate Judiciary. Confidentiality provisions equal to or greater than those provided by the department. Who determines confidentiality and what is the level of confidentiality? **Ms. Wellbank** Confidentiality would be determined by federal requirements. They are very, very strict and we take a lot of care with the information we have. The medicaid and state welfare programs have similar standards so we can be sure that they have equal or greater. I don't know if agencies of another state have jurisdiction and confidentiality provision, I don't know how we would determine that their confidentiality provisions are equal or greater, unless they had some federal reference.

CHAIRMAN KEATING Is there federal reference in this language that defines the standard of confidentiality? **Ms. Wellbank** Yes.

{Tape: 2; Side: A; Approx. Time Count: 10:15; Comments: None.}

Motion: **SEN. HOLDEN** MOVES TO AMEND SB 374 WITH AMENDMENT #SB037401.A35. (EXHIBIT #5)

SEN. HOLDEN In Senate Judiciary, we struck part B, line 17 & 18, I think that should have stayed in according to federal requirements. I would reinsert that line, adding to the last sentence that the employer may contact DPHHS to ascertain the validity of the order prior to implementing an income withholding order. The idea is that if the federal government is going to require these employers withhold and take other states' orders at face value, this gives our employers the opportunity to contact the department and ascertain the validity of the order. The department could develop rules to give our employers a reasonable amount of time to do this so they wouldn't be in violation.

CHAIRMAN KEATING You're asking the department to assume the obligation of ascertaining the validity of an order? **SEN. HOLDEN** To assist in helping an employer.

SEN. JERGESON Does this satisfy the Banker's Association concerning this area? **SEN. HOLDEN** I don't think the bankers are concerned with this area.

SEN. JERGESON The bankers want the department to ascertain the validity of the order. This amendment only addresses employers, you might want to put "an employer or other served and any recipient of a withholding order from another state could contact the department for validity". **SEN. HOLDEN** That would be fine.

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SEN. MAHLUM I believe the bankers were talking this morning about scamming, and once a bank is scammed on something like this, they don't get their money back. This would take care of it because of this does come from another state to a business, this business can make a copy of it and send it right into your office and ask if this is for real or not, then the department can check on it and call the employer back and let them know if it is for real.

SEN. JERGESON This section deals with the employer. Is there another section that involves income withholding from financial institutions and the concerns of the bankers? **Ms. Wellbank** There is a section that requires banks to honor writs of execution, which they already do, and enhances that. I don't know that **Mr. Bennett's** concerns were in that area or in getting an income withholding order from another state or agency and not being able to tell if it was valid.

SEN. JERGESON Banks are employers, if they have an employee who is an obligor, I can understand them wanting to be taken care of there. I suppose almost every other business entity would have the same concerns. This amendment would take care of that. On the other hand, the financial institutions have the other obligations because if somebody has certificates of deposit, mutual funds or something that they own through the bank, and those investments derive income which would be obligated to child support somewhere, the bank is responsible for withholding from that income. **Ms. Wellbank** We don't generally do that. We would get a writ of execution and seize the asset instead of taking a portion of the income.

SEN. JERGESON In that case there would be a document delivered to the financial institution to secure the asset, and there's a section that deals with that and I would be interested in putting similar language as it applies to financial institutions and those kinds of documents. **Ms. Pfeifer** The section we're currently on is known as direct income withholding. It's a part of the Uniform Interstate Family Support Act so we are dealing with the requirement of the uniform act in this section. Thirty-six states voted to offer that act even before it was a federal requirement, including Montana. This is happening in more than half the states already, income withholding orders are being sent to employers of other states. It is important to put the stricken language back in because that is part of the uniform act and we're required to adopt that act verbatim. Financial institutions or other people being subject to information requests or subpoenas from other states is a specific federal requirement that occurs in a few different places in the bill, lien registry is one place, so there are a few other places where the federal law says specifically that those entities have to be subject to an order or subpoena of information request from an agency from another state.

{Tape: 2; Side: A; Approx. Time Count: 10:25; Comments: None.}

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Vote: THE MOTION TO AMEND HB 374 WITH AMENDMENT #SB037401.A35
CARRIED UNANIMOUSLY.

CHAIRMAN KEATING Section 15, executional withholding of support obligations, who does the withholding in that area? **Ms. Pfeifer** Sections 14-21 are the provisions of the bill that relate to garnishment or withholding for public retirement systems. The federal law changed the definition of income that is subject to withholding to include public and private retirement systems. We have to be able to withhold from those systems.

CHAIRMAN KEATING Do people who have retired have kids that fall under AFDC? **Ms. Wellbank** These are only benefits that are being paid out. They're not the money you have in the system, but as they're paid out we can withhold and they're not necessarily families on AFDC, they may have been delinquent in their support.

CHAIRMAN KEATING This is part of your accounts receivable collection process.

SEN. JERGESON If PERS gets a withholding order from out of state, is there language here requiring them to treat that as it appears? **Ms. Pfeifer** They would be subject to Section 13 the same as anybody else. The definition of income is expanded to include disability, pension and retirement income. Another specific part of the welfare reform bill requires states to have laws requiring the interceptions of lump sum payments, so if there were lump sum distributions from the retirement system we'd get it that way. We have to have a law to take that too.

CHAIRMAN KEATING Section 23, adding social security numbers to applications, license, marriage certificate, existing loans.

SEN. JERGESON We have to go back and amend our marriage certificates? **Ms. Pfeifer** New license applications have to have a number box placed on them.

Judge Larson Page 25, line 22. It's not frequent, but we have a number of cases where we don't know the social security number of both parties, I would suggest we insert "if available"

{Tape: 2; Side: A; Approx. Time Count: 10:30; Comments: None.}

Motion/Vote: SEN. HOLDEN MOVES TO AMEND SB 374 BY INSERTING IF AVAILABLE ON PAGE 25, LINE 22. THE MOTION CARRIED UNANIMOUSLY.

Motion: SEN. HOLDEN MOVES TO AMEND SB 374 WITH AMENDMENT #440812CS.STS, ITEM #1. (EXHIBIT #6)

SEN. HOLDEN There are people in the system that don't go to court. We may have a young man with an illegitimate child and he openly and willingly agrees to pay what he is told to pay. This would allow him to have a withholding exemption. Currently this

is done, but only if he hires an attorney and goes through the courts and gets a court order. There are people in the system who don't go through the courts and work directly with the department. This would simply allow him or her an opportunity to request an exemption from doing that. That's not saying it would be granted, but it would allow the opportunity to request the exemption without having to hire an attorney and take it through the court.

Ms. Pfeifer Since the 1989 session, the Federal Family Support Act required there be immediate income withholding for all new support orders, whether issued by CSED or the courts. Federal law sets up the exceptions very specifically when income withholding wouldn't be appropriate. Exceptions are allowed by federal law if the court or the administrative agency considers this at the time the order is created. This amendment would give another opportunity to argue about whether income withholding is appropriate.

Ms. Wellbank The determination needs to be made when establishing a child support order.

CHAIRMAN KEATING The court order is only when the obligor fails to pay? **Ms. Wellbank** No, if someone goes to court to get a divorce, the court will issue an order. At that point they can make a statement saying why it isn't appropriate for income withholding. A person can apply for our services and our agency can establish the order. Either our agency or the district court can establish an order in almost any case.

CHAIRMAN KEATING You establish an order for garnishing or just for payment? **Ms. Wellbank** The order is to set the amount of child support. Income withholding must be ordered unless an exception is made at the time that order is established.

CHAIRMAN KEATING If the department's attitude is that the first thing we do is garnishee the wages, then I'd like to have an amendment that says just the opposite, that only if the obligor misses payments or refuses to pay can you garnish his wages. Does the federal law require garnisheeing in the first instance, or only if there is failure to pay? **Ms. Wellbank** No, there are 2 types of income withholding. The first that you're talking about is immediate withholding. Statute gives specific exemptions from immediate withholding, but the whole purpose of the federal law, on which our state law is staged, is that income withholding is the main way of collection.

CHAIRMAN KEATING What exceptions are allowed in federal law? If they're allowing exceptions, then their first order isn't necessarily garnishing. **Ms. Pfeifer** It doesn't have to be, but the exceptions have to be met. The exceptions are in statute, 40-5-315.

CHAIRMAN KEATING What burden does that put on the court? **Judge McCarter** In a divorce case the presumption is that income will automatically be withheld. Then we look at exceptions. One of the parties may request an exception for automatic withholding and present it to the court. Most of the time the parties will agree outside court in their divorce settlement agreement that the payments will be made in another manner. If they establish that the obligor is reliable and has never had a problem in the past with paying temporary child support, then we adopt the agreement that the parties have arranged. Courts don't have to do automatic withholding, but we always start out with a presumption that the child support payments will automatically be withheld from the employer.

CHAIRMAN KEATING Is that the interpretation of the federal requirement? **Ms. Pfeifer** Yes, and state law.

CHAIRMAN KEATING What are the consequences if the state reverses that presumption and says the obligor will voluntarily pay and that there will be no withholding until several payments are missed? **Ms. Wellbank** It would not be in compliance with federal law, which does jeopardize federal funding, but also our collections would decrease because this is our primary method. I think we could probably develop language that would comply with the federal law by saying the judge or the department shall see that it's in the best interests of the child to not embarrass the parent, or something like that. To comply with federal law and make a new state policy would be to put it when these orders are established and the decision is made.

SEN. HOLDEN Our discussions have been based on the premise of a court order, the reasoning behind my amendment is to focus on department orders when people don't have attorneys. If I was to approve an amendment you're drafting, I'd want to make sure the people that don't have an attorney can not have child support withheld. **Ms. Wellbank** We can amend that section of the law and will work on what you want. We should be able to find a way to do this.

{Tape: 3; Side: A; Approx. Time Count: 10:43; Comments: Tape 2 Side B not recorded on.}

SEN. HOLDEN WITHDRAWS HIS MOTION.

Ms. Pfeifer Everything through and including Section 41, are minor changes to what is in the existing Uniform Interstate Family Support Act that was adopted in Montana in 1993. These changes comply with the federal requirement that we adopted verbatim.

CHAIRMAN KEATING Is there anything in there that somebody doesn't want us to see?

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Ms. Pfeifer The blue book has the entire federal act, the uniform interstate family support act.

Motion: SEN. HOLDEN MOVES TO AMEND SB 374 WITH AMENDMENT #440812CW.STS ITEM #2.

SEN. HOLDEN I've been told that credit reports shows there is a garnishment but do not indicate if those are delinquent garnishments, good faith garnishments or just what kind of garnishments they are. This amendment directs the department to indicate if the person is up to date or not up to date.

CHAIRMAN KEATING Would the cause of the garnishment show up on the credit report? SEN. HOLDEN I would think so.

Ms. Wellbank We do not report people who's wages are garnished to the credit bureau unless they are delinquent 2 months or more.

SEN. HOLDEN I would think the department would be in full agreement with this amendment then.

SEN. MAHLUM I think this is a good amendment and doesn't hurt the department a bit.

CHAIRMAN KEATING This would direct the department that if enforced withholding is picked up by the credit bureau, the credit bureau will state that it's for delinquent support.

Ms. Pfeifer Can you clarify in this amendment that this is for the purposes of credit reporting by the department? We're not in control of other people that may report.

SEN. HOLDEN That wouldn't bother me. If you're going to make a report to the credit agency, they should know it's coming from you and everybody else looking at the report should be able to understand it's coming from you. If you think there's another word or two that needs to be added to the amendment to clarify it, I'd be open to that.

Ms. Pfeifer Perhaps you could add "to report by the department".

CHAIRMAN KEATING OK, for purposes of credit rating reports by the department, the department shall indicate if the withholding garnishment is for delinquent support.

{Tape: 3; Side: A; Approx. Time Count: 10:54; Comments: None.}

Vote: THE MOTION TO AMEND SB 374 WITH AMENDMENT #440812CW.STS CARRIED.

SEN. HOLDEN I have a question for the department on page 46, line 19. Can you recap your concerns with regard to where the children might be. Ms. Pfeifer This language comes straight from the Welfare Reform Act stating, the state has to have laws

in effect safeguarding information including prohibitions against release of information.

SEN. HOLDEN Is this going to affect parental rights to visitation? **Judge Larson** We're in control of visitation issues. Looking at the language, I would say for sure.

SEN. HOLDEN If the department may not disclose information regarding the whereabouts of a party, how are you going to find out where these kids are if you need to? It seems like there should be something in here that says the department has to give you that information. **Judge Larson** Would you want to say to the court if a party has violated a valid court order?

SEN. HOLDEN I guess that's where I'm going.

CHAIRMAN KEATING An entity failing to comply with this section is subject to contempt authority of the department, it's a court order, aren't they in contempt of court? **Judge Larson** I think **SEN. HOLDEN** means if the department has information as to where those children might be if custody or visitation orders were violated. This might be a way to track where those kids are. We might be able to locate the kids who are taken out of the jurisdiction in violation of court orders.

SEN. JERGESON On the other hand, this language could relate to an abusive spouse or parent. **Judge Larson** I think it should all be disclosed to the court. If the court is trying to locate an absent child, then they should be able to access information on where that child might be.

SEN. JERGESON Would a judge make the determination as to whether or not the obligor or obligated parent can be entrusted with the information as to where that child is? **Judge Larson** I just want to know which judge to contact in which state to find out what that judge is doing about custody or visitation support. In some instances, I need to know in what state that child was taken. This is something that could actually be beneficial to the courts regarding children who have been taken out of the jurisdiction contrary to court order.

April Armstrong, DPHHS You addressed the portion of the code that we changed to allow the court to get that information. It specifically refers to release of information to the other party, which in our case would be the obligated parent, or perhaps the obligee, and it's exactly for the point that was made. If the child is in protective custody, we have no business giving the information to the person who may potentially be the abuser, but we need to make the information available to the court if they need it. I don't think the two sections are at conflict. I think they say exactly what you expect them to say, the court is given the proper information, but the children are protected from the abuser.

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{Tape: 3; Side: A; Approx. Time Count: 11:00; Comments: None.}

Judge Larson I want to step completely out of the bill, I'm requesting there be a new section to say the Supreme Court Administrator would coordinate the development of guidelines. Guidelines for these new grants have not yet been developed and they're asking for input from the states. This amendment would allow the Supreme Court Administrator to designate someone to develop the guidelines for the new federal grants. State judicial districts applying for grants would coordinate their efforts through the administrator's office also. Grant applications would be in a central location so priorities could be made if necessary. I believe this would have to go at the end of the bill. (EXHIBIT #7) handed out.

Ms. Wellbank There is a provision in the federal act that's not reflected in our bill that makes grant money available to jurisdictions who are interested in doing visitation projects. I don't know whether this was necessary, I think it's already in the federal bill. We don't want to do it, so this amendment would not be a problem for us.

CHAIRMAN KEATING Since the department doesn't have any objection and the Supreme Court Administrator would be the operable party we'll have a amendment drafted.

Judge Larson Page 80, line 28, I request a one word change. "At the request of a party and" is the current language, I would strike the "and" and insert "or". **CHAIRMAN KEATING** "At the request of a party or upon a showing that the party's case was substantially prejudiced", is that what you're saying? **Judge Larson** Yes, so the person would have the right to request a hearing to see who's making the decisions.

Ms. Wellbank We may have to get a revised fiscal note for this because our current process is telephonic hearings. Last year we conducted 673 hearings telephonically and 20 in person hearings. If in person hearings become equally available and the rule rather than the exception, it could be that more people will request them which would require much more travel and scheduling on our part and the custodial parent's part.

CHAIRMAN KEATING In person hearings are really part of due process, are they not? A person who is not comfortable with the telephonic hearing should be able, as a part of due process, to request an in person hearing before the telephonic hearing is imposed upon them. **Ms. Wellbank** The Department of Labor does telephonic unemployment hearings.

CHAIRMAN KEATING Right now it looks like the department is emphasizing telephonic hearings to avoid the expense. I understand that, but I still think there's certain due process here for a person that's not comfortable with telephonic hearings.

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Motion/Vote: SEN. BAER MOVES TO AMEND SB 374 BY CHANGING "AND" TO "OR" ON PAGE 80, LINE 28. THE MOTION CARRIED UNANIMOUSLY.

Judge Larson Page 81, lines 9 & 10 addresses timelines that the department has stricken from the bill. Also page 53, line 22, had timelines for issuing decisions that the department has stricken. I don't quarrel with the fact those timelines may be unfair to the department, but I think due process would indicate some reasonable timeline, 3-6 months, when people can expect to get a decision or be told why it's taking so long. **CHAIRMAN KEATING** Page 53, line 22, within 20 days of the hearing, is that what you're saying?

SEN. BAER On page 53, line 22, **Ms. Wellbank**, what do you think would be fair for a time period for you to respond? **Ms. Wellbank** We could go with 6 months and if we could insert some sort of an exception for good cause.

SEN. BAER 6 months seems a long time to wait for a decision after a hearing. **Ms. Wellbank** We would like 6 months, mainly for the exception rather than the rule. Frequently there are continuances after briefings and briefing deadlines and dates that would extend that 20 days. The original 20 days timeline was because federal regulations required us to perform 75% of our actions within certain time periods. These are for audit and federal funding purposes, they want to make sure that we're moving the cases. The timelines were never intended as due process requirements. In a recent court decision that we lost, we considered this advisory rather than regulatory, we don't feel it will be possible to meet 100% of our cases within 20 days. We'd have to quadruple our hearing staff to be able to do that and some cases would still fall out, so if we could go with the 6 months, we'd appreciate that.

SEN. JERGESON Does the clock start ticking at the beginning of the hearing or the conclusion of the hearing? **Ms. Pfeifer** Most hearings are concluded in the same day, but some could go 2-3 days. We haven't had this question come up, I suppose it would be at the conclusion, once all the evidence was in.

Motion: SEN. HOLDEN MOVES TO AMEND SB 374 BY REINSERTING PAGE 53, LINE 22 WITH 20 DAYS CHANGED TO 60 DAYS.

CHAIRMAN KEATING Within 60 days of the hearing, the hearing officer shall enter a final decision. **Ms. Wellbank** An exception for good cause would be preferable. We're concerned about class action suits and not meeting time frames and what happened on this case we lost. The obligee who was owed about \$78,000 has no way of collecting because we didn't comply with the time frame.

SEN. HOLDEN I'd add that to my motion.

Judge Larson I would ask "within 60 days of the conclusion of the hearing", because there is always the possibility of a continuance on the hearing.

Ms. Wellbank Often the record is left open after the hearing for more evidence.

Ms. Armstrong Perhaps with the close of the record could be inserted. Often the obligor is given the opportunity to provide receipts or something so the records may be left open for 10-15 days after the conclusion of the hearing.

Judge McCarter Close of the record is meaningless. I suggest if you say something, it would be 60 days after the hearing has been concluded and all the evidence has been submitted.

CHAIRMAN KEATING "Sixty days after the hearing has been concluded and all the evidence has been submitted, except for good cause, the hearings officer shall enter a final decision" etc.

Vote: THE MOTION TO AMEND SB 374 CARRIED UNANIMOUSLY.

CHAIRMAN KEATING Back to page 81, what kind of a timeline do you want? Service of notice with intent to withhold income, inform the obligor of the hearing results concerning whether income withholding will take place. Why isn't 45 days enough? What's the motion?

Motion: SEN. HOLDEN MOVES TO AMEND SB 374 BY REINSERTING SUBSECTION B ON PAGE 81, LINE 9 & 10.

Ms. Wellbank The date of service of the notice is the day the obligor knows about our actions. He then has to request a hearing and we have to schedule it. Doing this within 45 days is very difficult to do in 100% of the cases. We generally try to comply with it, but there are always exceptions. We're concerned about the law implying we need to do all of this during that time.

CHAIRMAN KEATING What would be a reason you can't do it within 45 days? **Ms. Wellbank** This would be 45 days from the time they're served. They have 10 days plus 3 week days to request hearings which can be 2½ weeks into the 45 day time frame before they've even requested a hearing. Once they've requested a hearing a date needs to be found when everyone is available for the hearing. The hearing may not be until thirty days. That would leave 15 days to issue a decision, and depending on how complicated it is, that may not be enough time.

SEN. BAER Another possibility would be to require them to notify the intent to withhold income within a certain period of time, and then also require them to administer holding of the hearing also within a certain period of time after it takes place. We

have two problems here, they have to have the opportunity to request a hearing after being notified of the intent to withhold. Then there has to be a hearing and notification of the decision a certain time period after the hearing and all the evidence presented as we did in the last motion we made on the other section.

Motion: SEN. MAHLUM MAKES A SUBSTITUTE MOTION TO AMEND SB 374 BY CHANGING 45 TO 60 DAYS.

Ms. Armstrong It's my understanding from SEN. BAER'S comment that he wants to be consistent with the last section. The last section that you proposed to amend was after the close of the hearing. Are you intending to amend this to be 60 days after the close of the hearing or receipt of all the evidence, or are you proposing an amendment just to be 60 days after the obligor is served? It's fairly common that an obligor or an obligee may wish to do a discovery schedule after service because we may not have all the information, and I'm concerned about the timeline being so short that you can't even allow an obligor to get his finances and his records together.

SEN. BAER This is why I made the suggestion that we look at this two different ways, so there is the opportunity to request the hearing and prepare for that hearing, and then they have the right to receive a decision within so many days after the hearing and all the evidence is presented.

CHAIRMAN KEATING Let's hold off on any amendments right now and craft some language for a timeline that's appropriate for the department and for the purposes of the timelines.

Judge Larson I would need to be in the loop. There's another timeline at the bottom of page 81, top of page 82 for workable data. Page 57, lines 11 & 12 relate to not having copies with the district court and in the explanation that follows this central registry will be the be all and end all of these documents. I don't think it's appropriate to let this separate track of letting them file their administrative orders and not having to file them with the district court. When we're out of the loop, people who normally rely on the courthouses for information will be out of the loop. We're going to work diligently to get the central case registry up, but right now we docket these things with the district court and then the operators just report orders.

Ms. Wellbank: If we have a lien against real property, we would still file in court. If there is no reason for the lien, we wouldn't file. Administrative orders have full face credit under federal law. Docketing in district court is more of a formality, we don't docket in every one. This is driving the clerks of court crazy and they introduced a bill to start charging us for all these abstracts because this is a majority of their work load. I'd recommend changing the effective date of this

particular section and make it effective on the date of the central registry.

Judge Larson I think that's what I said, but actually when the central registry is operable and actually exchanging information between the district courts.

Ms. Wellbank The requirement is that it be operational in October 1998, and so we could make this section effective in October 1998.

Judge Larson I think it should be actually operational. We're all hopeful it will be done, but if it's not up and running we want to be able to have what we have now.

CHAIRMAN KEATING What if we strike this language, line 11 & 12. You're operating without this now. **Ms. Wellbank:** We're operating without it, but we're not paying for the abstracts. HB 195 will start charging us for the abstracts. Additionally, this was a clerical administrative duty that's taking our hearing staff 2 FTE's to do. With the increasing number of hearings, we'd like to be able to redirect them because we think this is purely administrative and not necessary.

CHAIRMAN KEATING It still means that there would be liens against property without being recorded. **Ms. Wellbank:** No, in order to get the lien against property, we would continue to abstract in district court, but we wouldn't have to abstract 100% of our orders as we do now. It doesn't create anything new in liens, when we abstract all we're doing is sending a summary of the order to district court for their file. This would say we'll keep it in our own files and everyone has had notice, if we file the lien we need to go to district court and do all the regular things.

Judge Larson Writs of execution are issued by the district court and they're only issued after the abstract is filed. That's a very important issue for many people in business and the community. Section 54 creates this statewide lien on property which doesn't contemplate any notice filing in the county where the property is located. If they're going to have this statewide lien on property you should have it filed in the county where the property and court is.

Ms. Pfeifer We issue different kinds of orders, paternity determinations have no lien effect and there's no reason to abstract those to district court. We wouldn't have to abstract administrative orders to district court. Those we wanted a lien on would continue, we'd abstract them with the district court to have a lien effect. We don't do writs of execution in all cases, we may collect in other ways. We want the ability not to have to file them, but to file them where there's a need to have a district court effect to them.

SEN. JERGESON Would there be a way to leave this language in but put an exception in and reference the statutes related to property liens and writs of execution and everything that has lien effect? **Ms. Wellbank** We could clarify that anything with a lien effect would still be abstracted to district court. It would have to have a lien effect, but we'd be willing to clarify that in the law.

CHAIRMAN KEATING I think it should be clarified somehow. **SEN. BAER** Would it be effectual if we added a subsection 4, making the above effective upon the up and running central case registry? **CHAIRMAN KEATING** As the judge pointed out, the central case registry might not be up and running for a couple of years.

Ms. Pfeifer If it's not filed with the district court, it doesn't create a lien.

CHAIRMAN KEATING What kind of final administrative order would be effective as though it were court ordered. Why do you have that language in the first place? **Ms. Pfeifer** In 1985 we developed an administrative process because we were having problems with other states honoring our administrative orders. Other states didn't do administrative orders, they did court orders. Federal law states administrative support orders and paternity orders are entitled to full faith and credit and are as effective as a district court order. This gives us the lien effect of a district court order, the court will docket it and it becomes a judgment just like a district court order would be. This gives us extra enforcement.

CHAIRMAN KEATING I'm going to recommend that you rewrite this language to make it more clear. The current language is not acceptable.

SEN. BAER I'm uncomfortable with giving an administrative order the same force and effect of a district court without going through the district court. I don't like that at all.

Judge Larson The issue of how child support is figured is not a section in the bill but relates to what is driving everything in the bill. I passed out a packet to you, the last section of the packet is the State of Wisconsin's child support guidelines.

(EXHIBIT #2) Our complex guideline system is receiving national recognition but it takes forever to complete and creates controversy. People manipulate them, find ways to argue and bring these into child support/child custody issues. Oftentimes the guidelines drive who has custody for how many days, because they know under our system if a parent has 110 days, they're entitled to a certain reduction. A number of judges have told me that they need something they can work with, we often end up with one set of guidelines from one side, another set of guidelines from the other and then hire a special master to give a third. Then the decision is made. There isn't anything technically

wrong with what the department does, but I think it would free up some of the money you are looking for. I know the department opposes this and has strong arguments for the current system. I think you need to look at what's actually driving the wagon, this complex formula that we've developed. The Wisconsin option is 17% for 1 child, 24% for 2, 29% for 3, 31% for 4, 32% for 5, you take out the expenses and put back in depreciation. (EXHIBIT #8) handed out.

SEN. JERGESON I can see this works well for the typical family with 2.1 children if they're normal in every respect. What about disabled children or children in a drug treatment program? Is the obligated parent under this scenario absolved of any responsibility for helping with the child that may be more expensive than normal? **Judge Larson** We need to look at how the State of Wisconsin deals with these issues.

SEN. JERGESON What if there are 2 children, one developmentally disabled, the obligated parent looks at this formula and say they're just obligated for 25% of their income, no matter how expensive these 2 children may be to maintain. **Judge Larson** The current system in Montana doesn't make any adjustment for that. Unless the obligated parent is supplying some of the extra treatment, it's treated as a deviation.

Ms. Wellbank: This is a major public policy issue. South Dakota just completed a two year study by an interim legislative committee to come up with guidelines. Montana currently does the guidelines by rule. We have hired private contractors to gather and study data from the judiciary, individual parties, lawyers around the state and child support workers. Our guidelines take into consideration both parents income and assets and special circumstances in their household. They are complex but determining income is sometimes complex, especially with self-employed people. The Wisconsin model **Judge Larson** proposes would be exactly what I would support, but it isn't fair and equitable and the majority of people that we've interviewed want a fair and equitable model. I recommend that, if you don't want to leave the guidelines to the department's discretion, the legislature appoint an interim study commission for this issue. It is extremely complex.

{Tape: 3; Side: B; Approx. Time Count: 11:53; Comments: None.}

CHAIRMAN KEATING This is a major policy decision and too much for the subcommittee to deal with. I'd like an amendment for review by the whole committee. We could try to adapt Wisconsin's statute to Montana. I'd like either a summary or specific draft of the Wisconsin language to fit Montana's language for purposes of amendment and discussion.

Taryn Purdy, Legislative Fiscal Division I will talk with one of the attorneys.

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CHAIRMAN KEATING Have you addressed all of your concerns **Judge Larson**? **Judge Larson** My last issue addresses the circuit court on page 69, lines 9 & 10. It states the clerk of court shall issue an order, I believe it is more appropriate for the court to issue a temporary order. Clerks don't usually issue orders that people are required to file. Strike "clerk and recorder" on lines 9-10 and insert "the district court shall issue a temporary order".

Motion/Vote: SEN. HOLDEN MOVES TO AMEND SB 374 BY STRIKING THE WORDS "CLERK OF COURT" AND INSERTING "DISTRICT COURT ON LINES 9 & 10 AND STRIKING THE WORD "AN" AND INSERT THE WORDS "A TEMPORARY" ON LINE 10. THE MOTION CARRIED UNANIMOUSLY.

AMEND SENATE BILL 374, Second Reading, by adding a new section, to read as follows:

"NEW SECTION. Section ____. *Department as central clearinghouse--
Employers, payors, financial institutions relieved of responsibility.* (1)

Notwithstanding any other section, any employer, payor or financial institution served with a support order, income withhold order, or other legal process, issued by or in any other jurisdiction other than Montana, or by any Indian Tribe, may respond to such legal process by sending to the Department, by certified mail, the legal process, together with any payment, document or information required.

(2) Upon compliance with subsection (1) the employer, payor, or financial institution shall be deemed to have met all legal responsibility thereunder and shall be relieved of all duties or responsibilities with respect to such legal process and any liability or duty to any other person or persons."

THE PURPOSE OF THIS PROPOSED AMENDMENT: Under a number of the sections of the bill, employers, payors and financial institutions are required to recognize and respond to legal process issued in other states, jurisdictions and by Indian Tribes, putting them at risk as to:

1. Invalid or forged legal process,
2. Directing payment to an unauthorized person or entity,
3. Attempting to determine priority in case of more than one service of process, and
5. Trying to deal with the laws of other jurisdictions or Indian Tribes.

Section 2 of the bill really calls for a centralized child support system to be managed by the Department so that all affected parties would have one source of information and one central agency to deal with. To allow agencies in foreign jurisdictions and Indian Tribes to serve employers, payors and financial institutions directly is contrary to the expressed intent and purpose of Section 2 (and other sections directing a centralization of administration).

This amendment would allow employers, payors, and financial institutions, at their option, to deal directly with the Department in the event they are served with legal process not originating under Montana law.

MEMO

SENATE FINANCE AND CLAIMS
COMMITTEE NO. 2
DATE 3/11/97
BILL NO. SB 374

TO: Subcommittee on Senate Finance/Judiciary
FROM: John W. Larson, District Judge
RE: Draft Amendments to S.B. 374
DATE: March 10, 1997

I. STATE CASE REGISTRY (§ 2-4, S.B. 374)

Section 2 of S.B. 374.02 delegates to the Department the complete control of the child support case registry.

(Section 2, P. 4)

(A)

Subsection (3) of Section 2 (P. 4, l. 16) indicates that the information may be shared with courts (over two years ago the Missoula District Court and Clerk of Court office began discussing options with CSED to link up information-sharing between CSED and the District Courts. Cases involving children are most important and Missoula District Court was already noticing many information gaps and much confusion, unnecessary expenses and increased controversy in child cases because of information roadblocks between CSED and the District Courts.

Recommendation:

P. 4, l. 17-18

Strike: "Upon request"

P. 4, l. 18

Following: "information"

Strike: "may"

Insert: "must"

(The Missoula system will be hooked with CSED and the pilot project funds available will be used to link up regional offices with District Court Clerks in those regional areas. Missoula, Billings, Butte, Helena and ??Great Falls.)

(B)

The centralized case registry established by Sections 2, 3 and 4, of S.B. 374 should be jointly managed by the judiciary, district court clerks and CSED to ensure a system that interfaces with all the major players in this area. While the current bill works for CSED, there will be other issues developed as implementation progresses. Having a joint board or commission that operates the central case registry will assist and facilitate the resolution of issues that come up and allow the smooth flow of information between the judiciary, district court clerks and CSED. See Section 8, P. 11. These few lines are product of our efforts to exchange information electronically. We have also obtained a temporary Montana Supreme Court rule which will be modified to allow electronic exchange as well as exchanged of optically scanned copies. (See attached Montana Supreme Court Orders.)

Sections 24-26 of S.B. 374 impose additional requirements on the Marriage and Divorce Act consistent with the central registry, coordination with the judiciary and the district court clerks will assist in making this process workable and convenient for all it is intended to serve.

Recommendation:

V. GRANTS FOR ACCESS AND VISITATION PROGRAMS (Section 669B)

The last section of the new federal act, Section 669B, P. 91 of blue book provides for grants for access of visitation programs. Again, as district judges and clerks we are interested in increasing and facilitating access to and visitation. Missoula currently has a mediation center. All of the options available under Section 669B, P.91 could and should be implemented in Montana. The federal grants (minimum \$50,000) for Fiscal 97-98, would be very useful in developing and/or continuing existing programs. They do not appear to be mentioned in the bill. Again, judicial coordination with CSED would facilitate and speed the many children needing these services in Montana.

Evidently the new program is looking for input from the state to develop guidelines. I am attaching the Fourth Judicial District Court Visitation Guidelines which were initially adopted in the 21st Judicial District by Judge Langton and then modified by the 4th Judicial District and others. Involvement of the judiciary in the development of these programs is essential for their success.

Recommendation: Allow judiciary input into the development of the guidelines and allow the judiciary to participate in the grants.

**IN RE THE MATTER OF
REID CONNELL,
Petitioner and Appellant,
vs.
STATE OF MONTANA, DEPARTMENT
OF SOCIAL AND REHABILITATION
SERVICES, CHILD SUPPORT
ENFORCEMENT DIVISION,
Respondent.**

No. 96-223.
Submitted on Briefs August 8, 1996.
Decided January 2, 1997.
54 St.Rep. 28.
Mont. ____
P.2d ____.

ADMINISTRATIVE LAW - DUE PROCESS - CHILD SUPPORT, The district court affirmed an administrative law judge's decision denying father's motion to dismiss with prejudice a child support collection action and state tax offset action filed against him. He appealed. The Supreme Court held:

1. **ADMINISTRATIVE LAW - DUE PROCESS,** Administrative agencies are not exempt from the constitutional restraints of due process requirements.

2. **DUE PROCESS - ADMINISTRATIVE LAW,** Under the protection of due process, people are granted the opportunity to be heard at a meaningful time and in a meaningful manner. Due process mandates that an administrative hearing will constitute a fair trial, conducted in accordance with fundamental principles of fair play and applicable procedural standards established by law.

3. **ADMINISTRATIVE LAW - DUE PROCESS,** The State's unreasonable delay in resolving this case, violated father's right to due process guaranteed by Montana Constitution Article II, Section 17.

4. **ADMINISTRATIVE LAW - DUE PROCESS - CHILD SUPPORT,** Failure on the part of CSED's hearings office to render a decision after a lapse of 44 months constitutes undue delay under Montana Constitution Article II, Section 16, and violates the due process guarantees under Montana Constitution Article II, Section 17.

Reversed and remanded.

**Appeal from the District Court of Missoula County,
Fourth Judicial District.
Honorable John S. Henson, Judge.**

For Appellant: **Richard A. Reep, Reep, Spoon & Gordon, Missoula.**

For Respondent: **K. Amy Pfeifer, Department of Public Health and Human Services, Child Support Enforcement Division, Helena.**

JUSTICE NELSON delivered the Opinion of the Court.

Reid Connell appeals from the opinion and order of the Fourth Judicial District Court, Missoula County, affirming the decision of an administrative law judge denying Connell's motion to dismiss with prejudice a child support collection action and state tax offset action filed against him. We reverse and remand.

We restate the issues on appeal as follows:

1. Has Reid Connell's constitutional right to due process been violated under the facts of this case?

2. Did the District Court err in affirming the administrative law judge's decision that CSED's actions should not be dismissed under Rule 41(b), M.R.Civ.P., for failure to prosecute?

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Reid Connell (Connell) and Norma Schlenvogt (Schlenvogt) were first married on March 27, 1967. During the course of their first marriage, three daughters were born in 1967, 1972 and 1974 respectively. Connell and Schlenvogt divorced on December 24, 1975. They later remarried on June 3, 1977, but a divorce decree was entered by default on November 14, 1977, in the Fourth Judicial District Court, Burleigh County, North Dakota. Pursuant to this 1977 decree, the North Dakota District Court awarded Schlenvogt custody of the three minor daughters, granted Connell reasonable visitation rights and ordered Connell to pay \$550.00 per month in child support. After the dissolution, Schlenvogt remained in North Dakota with the three daughters and Connell continued living in Missoula, Montana.

For approximately two years, beginning in December 1988, Schlenvogt and her current husband received public assistance, including Aid to Families with Dependant Children (AFDC), from the state of North Dakota. To receive this assistance, Schlenvogt signed a document assigning her rights to collect child support to the North Dakota Department of Human Services to begin child support collection proceedings against Connell.

After receiving an interstate referral for the enforcement of child support from the State of North Dakota, Montana's Child Support Enforcement Division (CSED) initiated a collection action against Connell. In February 1990, CSED served Connell with a Notice of Intent to Withhold Income alleging that he

was delinquent in the payment of child support for his daughters and thereby began an income withholding action against him. On June 18, 1990, the State Auditor's office sent Connell a notice that his 1990 state warrant would be offset against the debt he owed CSED. After deposing Schlenvogt on August 21, 1990, an in-person administrative hearing was held on both matters February 15, 1991, in Missoula, Montana.

At the close of the hearing, the hearings officer established a schedule for the submission of proposed findings of fact, conclusions of law and order from the parties. Connell submitted his proposed findings and conclusions on March 21, 1991. However, despite applying for and receiving several extensions of time, CSED failed to submit its proposed findings of fact, conclusions of law and order. Furthermore, the hearings officer failed to enter a decision.

It was not until almost four years after the February 1991 hearing that a new administrative law judge (ALJ) took any action to finalize this matter. On December 23, 1994, the ALJ ordered the parties to appear at a telephone conference for the purpose of submitting arguments and motions on the preparation of findings of fact, explaining that the hearings officer who initially heard this case was not available to prepare Findings of Fact, Conclusions of Law and Order in this matter because his contract expired July 1, 1992. On January 11, 1995, a telephone conference was convened. During the conference, both Connell and CSED agreed that the credibility of the witnesses was material, and, therefore, the provisions of § 2-4-622(1), MCA (1993) (providing options to parties when a hearings officer is unavailable for decision), did not apply. Furthermore, Connell refused to waive compliance with this statute as allowed by § 2-4-622(2), MCA (1993). Additionally, Connell moved for default judgment against CSED in conformity with his proposed Findings of Fact, Conclusions of Law and Order, or in the alternative, to dismiss.

On July 28, 1995, following timely submission of briefs, the ALJ denied Connell's motions and ordered a rehearing of the matter. Connell petitioned the Fourth Judicial District Court for judicial review of the ALJ's order. After accepting Connell's petition, the District Court affirmed the ALJ's July 28, 1995 Order. From this judgment, Connell appeals.

STANDARD OF REVIEW

Our standard of review concerning a district court's conclusions of law is whether the trial judge's interpretation of the law is correct. *Steer, Inc. v. Department of Revenue* (1990), 245 Mont. 470, 474-75, 803 P.2d 601, 603. In this case, the District Court held that, despite a delay of 44 months, dismissal of

CSED's income withholding action was not a proper remedy. We review this conclusion of law to determine whether the District Court properly interpreted Montana's constitutional guarantees to due process.

DISCUSSION

Has Reid Connell's constitutional right to due process been violated under the facts of this case?

We hold that Connell's right to due process under Montana Constitution Article II, Section 17, has been violated and reverse the District Court's decision to affirm the ALJ's July 28, 1995 Order. Because this issue is dispositive, we will not address the second issue raised on appeal.

Connell argues that the District Court erred when it held that dismissal was not a proper remedy. Connell contends that he has a protected liberty interest in having a final decision rendered within the time frames established by the Montana Legislature. He asserts that when the CSED hearings office failed to render a decision after almost a four-year period, this lack of action constituted an unnecessary and unreasonable delay, and, thereby, violated his right to due process. Connell admits that he received the requisite notice and a fair hearing, yet, he asserts that he also has a procedural right to be free from unnecessary delay in the final adjudication of his child support obligations.

Connell points out that hearings officers are required to take official notice of federal and state law, pursuant to Rule 46.30.633(1)(a), and (b), ARM, and that specific time frames for completion of actions are set forth under Rule 46.30.643, ARM. Specifically, "[i]ncome withholding actions must be completed within 45 days after service of notice under 45 CFR 303.100." Rule 46.30.643(1), ARM. Furthermore, Connell asserts that hearings officers must enter a final decision and order within 20 days of the hearing pursuant to § 40-5-226(7), MCA (1989). Connell argues that CSED's hearings office failed to meet each and every one of these time frames. Therefore, Connell asserts, CSED violated his right to due process and dismissal of this action is appropriate.

CSED responds that the timetable for informing the obligor of the hearing decision on a Notice of Intent to Withhold Income is 45 days from the date of service of the notice under § 40-5-414(6), MCA (1989), and that no statutory time limit is set for issuing a decision concerning the state tax offset notice under § 17-4-105, MCA (1989). CSED attributes the missed 45-day deadline to Connell's requests for continuance of the hearing which resulted in the hearing being held one year after service of notice. CSED additionally at-

tempts to avoid responsibility for its inaction by stating:

Once the hearing officer was no longer empowered by the CSED to render a decision, the CSED was unsure how to proceed in the absence of the hearing officer. Eventually, after reorganization of the CSED Hearings Office, and the lapse of an additional thirty months, the new Administrative Law Judge took steps to have the matter finally determined. ...

Further, relying on authority from other jurisdictions, CSED argues that while Rule 46.30.643(1), ARM, and § 40-5-414(6), MCA (1989), respectively require that income withholding actions must be completed and the obligor notified of the hearing decision within 45 days after service of notice, these time frames are merely directory rather than mandatory. Therefore, CSED asserts that although violation of these time frames subjects CSED to possible federal audit penalties, it does not form a basis for dismissal of the action or entry of default against CSED.

[1] We disagree. Whether the specific time frames established for income withholding actions are directory or mandatory is a question we find unnecessary to answer in this case and does not affect our conclusion that CSED's failure to render a decision for 44 months violated Connell's due process guarantees under the Montana Constitution. "Administrative agencies are not exempt from the constitutional restraints of due process requirements." *Montana Power Co. v. Public Service Comm.* (1983), 206 Mont. 359, 368, 671 P.2d 604, 609.

[2] Under the protection of due process, people are granted the opportunity to be heard "at a meaningful time and in a meaningful manner." *Montana Power Co.*, 671 P.2d at 609 (citing *Mathews v. Eldridge* (1976), 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18, 32. Indeed, "due process mandates that an administrative hearing will constitute a fair trial, conducted in accordance with fundamental principles of fair play and applicable procedural standards established by law." *Precious Metals Assocs. v. Commodity Futures Trading Comm'n* (1st Cir. 1980), 620 F.2d 900, 910 (citation omitted). The Montana Constitution broadly guarantees that "[n]o person shall be deprived of life, liberty, or property without due process of law." Art. II, Sec. 17, Mont. Const. Moreover, Connell is guaranteed that "justice shall be administered without ... delay." Art II, Sec. 16, Mont. Const.

In addition to the constitutional guarantees for prompt disposition of administrative actions, Montana statutes and administrative rules set forth specific time frames for expedited administrative income

withholding actions. CSED initiated an income withholding action against Connell pursuant to the provisions of Montana's Child Support Enforcement Act, §§ 40-5-401, et seq., MCA (1989). Rule 46.30.643(1), ARM, requires that income withholding actions must be completed within 45 days after service of notice and § 40-5-414(6), MCA (1989), requires that the obligor be informed of the hearing decision within the same time frame. The purpose of the Child Support Enforcement Act is "to provide a more effective and efficient way to guarantee the support of dependent children" Section 40-5-402, MCA (1989). This stated purpose comports with the federal regulation calling for expedited administrative or judicial processes that increase the effectiveness and meet specified processing times concerning income withholding actions. 45 C.F.R. § 303.101 (1989).

[3] CSED not only missed all legally imposed time frames for completion of this action, but it also blatantly violated all notions of procedural fairness by failing to act for a period of 44 months after the expiration of the deadline for submitting proposed findings of fact and conclusions of law. Moreover, CSED's statement that it was "unsure how to proceed" once the original hearings officer's contract expired is shocking, to say the least. Having missed every deadline imposed upon it by law and by its own hearings officer, CSED's attempt to justify its failure to do anything because it was not sure what it should do borders on the absurd. Litigants appearing before our State agencies in proceedings where their property, benefits or rights are at stake deserve better treatment than being forced to twist slowly in the breeze because the agency not only fails to timely complete a proceeding it commenced, but, worse, is apparently not even sure how to go about doing so. Consequently, we conclude that CSED's unreasonable delay in resolving this case, in light of the various time frames discussed above, violated Connell's right to due process guaranteed by Montana Constitution Article II, Section 17. Montana's constitutional guarantee of justice without delay set forth at Article II, Section 16 adds further support to our conclusion on the facts here.

Only once before have we dealt with a similarly long period of inaction on the part of a state agency. See *Klundt v. State, ex rel., Bd. of Personnel Appeals* (1986), 219 Mont. 347, 712 P.2d 776. While neither party in this action cited *Klundt* in their briefs, we believe that it is appropriate that we acknowledge the case, in any event. In *Klundt*, a worker alleged that, due to a 37-month delay, the Board of Personnel Appeals (Board) denied him a timely hearing and thereby violated his due process rights. We affirmed the District Court order granting the Board's motion to dismiss. We stated that, in Montana, due process

requires notice and an opportunity to be heard. *Klundt*, 712 P.2d at 779. Without any further analysis, we concluded:

In this case, the Board fulfilled the fundamental requirements of due process. Klundt received notice and was given an opportunity to be heard. The three-year delay is disturbing, but not fatal.

Klundt, 712 P.2d at 779.

The facts in *Klundt* potentially explained the Board's delay in conducting a hearing by indicating that the Board put the matter on hold in response to a request from Klundt's union allegedly instigated by Klundt himself. Additionally, Klundt did not argue that any specific time frames were violated, but only that this particular delay was too long. In this case, CSED only explains that the hearings office failed to render a decision within established time frames due to CSED's uncertainty and resulting inaction.

It appears that *Klundt* was decided on its facts and does not establish precedent one way or the other as far as the instant case is concerned. Here, the income withholding action filed against Connell by CSED was not timely completed because of the lack of diligence

and inaction of the responsible agency. CSED failed to act within the time frames established by law, by administrative rule, and by the hearings officer. Connell did nothing that would justify the unreasonable delay at issue here--a delay which we conclude is more than simply "disturbing."

[4] In sum, failure on the part of CSED's hearings office to render a decision after a lapse of 44 months constitutes undue delay under Montana Constitution Article II, Section 16, and violates the due process guarantees under Montana Constitution Article II, Section 17. CSED's violation of Connell's due process rights compels dismissal. Therefore, based on the facts of this case, we hold that the District Court erred in affirming the ALJ's July 28, 1995 Order denying Connell's motion to dismiss and setting a rehearing date. Accordingly, we hereby remand for entry of an order dismissing with prejudice both CSED's income withholding action against Connell and CSED's proposed tax offset action against Connell's 1990 state warrant.

Reversed and remanded.

CHIEF JUSTICE TURNAGE, JUSTICES GRAY,
ERDMANN and HUNT concur.

Judge Larson

No. 96-466 & 96-447

IN THE SUPREME COURT OF THE STATE OF MONTANA

1996

DAVID SEVERNS,

Petitioner and Respondent,

v.

STATE OF MONTANA,
DEPARTMENT OF SOCIAL AND
REHABILITATION SERVICES,
CHILD SUPPORT ENFORCEMENT
DIVISION,

Respondent and Appellant.

APPEAL FROM: District Court of the Fourth Judicial District,
In and for the County of Missoula,
The Honorable John W. Larson, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

John M. McRae, Special Assistant Attorney General,
Missoula, Montana

For Respondent:

Christopher Daly, Missoula, Montana

Submitted on Briefs: November 14, 1996

Decided: January 2, 1997

Filed:

[Signature]
Clerk

Justice William E. Hunt, Sr. delivered the Opinion of the Court.

Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1995 Internal Operating Rules, the following decision shall not be cited as precedent and shall be published by its filing as a public document with the Clerk of this Court and by a report of its result to State Reporter Publishing Company and West Publishing Company.

The Child Support Enforcement Division of the Montana Department of Social and Rehabilitation Services (CSED) appeals the decision of the Fourth Judicial District Court, Missoula County, requiring the CSED to comply with an earlier order of the District Court which the CSED failed to appeal.

We affirm.

David Severns (Severns) is the father of two children born of two separate relationships. The CSED calculated Severns' child support obligation for each child, but Severns took issue with the manner in which those obligations were calculated. In determining Severns' support obligation for his second child, the CSED deducted his existing support obligation for his first child from his available monthly income. It then used his remaining available monthly income as the basis for calculating the support due to his second child.

Severns contended that this method of calculation in effect penalized him for having two children by two different mothers. He contended that the child support should have been calculated by determining the obligation for two children, deducting that amount from his available income, and then dividing the figure by two. He

appealed the CSED's method of calculation because he claimed it impermissibly resulted in a higher child support obligation than would have resulted if the CSED had used the method he suggested. The Administrative Law Judge (ALJ) affirmed the CSED's determination and Severns appealed to the District Court.

By an order dated February 28, 1995, the District Court determined that the method employed by the CSED was in compliance with the child support guidelines. Nevertheless, the District Court concluded that application of this method of calculation in this case was an error of law because it failed to take into adequate consideration Severns' obligation to support two children by two different mothers. It therefore concluded that the CSED's method of calculation was "unreasonable and arbitrary" and remanded the matter for recalculation of Severns' support obligation. The CSED did not appeal this 1995 order of the District Court.

On remand, the CSED refused to use a different method of calculation other than that which it felt was mandated by the child support guidelines. It therefore re-figured Severns' support obligation using the same method of calculation it had employed before and, not surprisingly, reached the same result. Severns again appealed; the ALJ again affirmed; and Severns again appealed to the District Court. By an order dated April 29, 1996, the District Court informed the CSED and the ALJ that this was not the result mandated by the 1995 order, and remanded again with instructions that the CSED fully comply with the 1995 order. The CSED now appeals.

On appeal, the CSED addresses the propriety of the 1995 order, which it contends was erroneous and exceeded the District Court's authority. In response, Severns points out that the 1995 order was an appealable one, but that the CSED did not appeal it. In the absence of an appeal, Severns contends that, correct or incorrect, that order became the law of this case.

The doctrine of "the law of the case" refers to

the principle that if an appellate court has passed on a legal question and remanded the cause to the court for further proceedings, the legal question thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain the same.

Black's Law Dictionary (6th ed. 1990) 886-887 (citations omitted); see also *Fiscus v. Beartooth Electric Cooperative, Inc.* (1979), 180 Mont. 434, 436, 591 P.2d 196, 197. The law of the case means that once an issue has been finally decided, whether rightly or wrongly, it cannot again be relitigated. *State v. Black* (1990), 245 Mont. 39, 44, 798 P.2d 530, 533 (citing *State v. Zimmerman* (1977), 175 Mont. 179, 185, 573 P.2d 174, 177). The principle of the law of the case promotes judicial economy and serves the need for finality of judgments; it also stands for the proposition that there must be an end to litigation at some point. Black, 798 P.2d at 533 (citing *State v. Perry* (1988), 232 Mont. 455, 463-64, 758 P.2d 268, 273-74).

The doctrine of the law of the case has most often been applied in Supreme Court decisions. See, for example, *Haines Pipeline Construction v. Montana Power Co.* (1994), 265 Mont. 282, 876 P.2d 632; *In re Marriage of Becker* (1992), 255 Mont. 357, 842

P.2d 332; Zimmerman, 573 P.2d 174. But we have also held that the law of the case is equally applicable to prior rulings of a trial court in the same case. *State v. Carden* (1976), 170 Mont. 437, 439, 555 P.2d 738, 739 (citations omitted). Such is the situation in the case at bar. The CSED was presented with an appealable order which it chose not to appeal. In the absence of an appeal, that order became the law of this case.

The CSED, however, argues that the law of the case doctrine should not apply because the 1995 order of the District Court was open to interpretation. It claims that it believed the order only mandated that it reevaluate the fairness of the method used, not that it employ a different method entirely. Since the order could be interpreted two ways, the CSED argues that the order was ambiguous and, therefore, cannot constitute the law of the case.

We have reviewed the order in question and can discover no ambiguity. The District Court stated:

[w]hile it is true that CSED subtracts from his gross income the amount [Severns] pays in child support for his other child, in setting the child support obligation for each child, CSED acts as if he has only one child. This method of calculation is not reflective of [Severns'] individual situation. . . . In determining his support obligation, the agency cannot legally ignore the fact that he has two, not one child to support by calculating each of his two obligations as if he only had one. . . . Therefore, the Court remands the case to the agency for a recalculation of [Severns'] child support obligation, taking into consideration the fact, as required by § 40-4-208, MCA, and § 40-6-216(5), MCA, that he is obliged to support not one, but two children.

(Emphasis added.) This order clearly does not contemplate a recalculation using the same methodology the District Court concluded was, in this case, erroneous. Rather, it mandates a

recalculation using another, more equitable formula. The order in question set out the law as determined by the District Court. Since the CSED did not appeal that judicial determination, the 1995 order of the District Court was and is the law of this case.

It is not the function of the CSED to determine whether the pronouncements of the District Court are correct or not; that is the function of this Court. If the CSED is presented with a decision with which it disagrees, it may choose to follow it or it may choose to appeal it. It may not, however, choose to ignore it.

Affirmed.

William E. Hunter
Justice

We Concur:

J. A. Thomas
Chief Justice
Troy Trowell
James S.
William Leight
Justices

IN THE SUPREME COURT OF THE STATE OF MONTANA

FILED

IN THE MATTER OF THE REQUEST FOR JUL 30 1996 O R D E R
ADOPTION OF TEMPORARY RULE

Ed Smith
CLERK OF SUPREME COURT
STATE OF MONTANA

The Hon. John W. Larson, District Judge, Fourth Judicial District has, pursuant to § 3-2-605, MCA, requested this Court to enter an order approving as a temporary rule that certain order re: Electronic Certification dated July 22, 1996, entered by the District Judges of the Fourth Judicial District, a copy of which is attached hereto as Exhibit "A." Judge Larson submits that adopting this order as a temporary rule will enable the Fourth Judicial District to design and implement a pilot project authorized by the 1995 Legislature for a paperless process exchanging child support orders requested by the Child Support Enforcement Division of the Department of Public Health and Human Services. Judge Larson advises that that Division has no objection to attached order or proposed rule. Good cause shown,

IT IS ORDERED that the attached July 22, 1996, order of the Judges of the Fourth Judicial District re: Electronic Certification should be and is, hereby, adopted as a temporary rule applicable to the Fourth Judicial District only, said rule to remain in effect until further order of this Court.

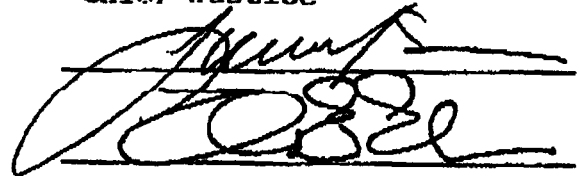
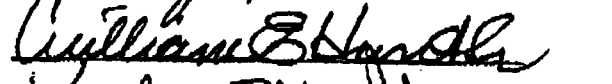
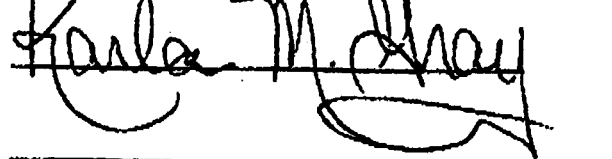
IT IS FURTHER ORDERED that the District Judges of the Fourth Judicial shall report to this Court six months from the date of this order, and every twelve months thereafter, as to design,

implementation, functioning and results of the pilot project referred to.

IT IS FURTHER ORDERED that the Clerk of this Court give notice of this order by mail to the Judges of the Fourth Judicial District and to the Child Support Enforcement Division of the Department of Public Health and Human Services.

Dated this 30th day of July, 1996.

Chief Justice

Justices

1 Fourth Judicial District
2 Missoula County Courthouse
3 200 West Broadway
4 Missoula, MT 59802

5 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

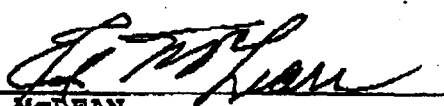
6 IN THE MATTER OF)

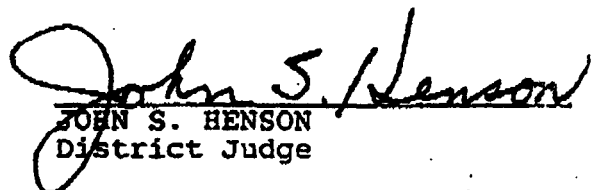
7 ELECTRONIC CERTIFICATION)

8) O R D E R
9)

10 Court documents, including signatures, which relate to child
11 support issues may be certified, compiled and copied onto a CD-ROM
12 or laser disc. Each electronic entry bearing the notation "Fourth
13 Judicial District Imaging Project" is a public record of the Fourth
14 Judicial District and self-authenticated under Rule 902(4), Montana
15 Rules of Evidence. The data is presumed to be correct. A hard
16 copy of the original document will remain in the Clerk's office in
17 order to verify authentication.

18 DATED this 22nd day of JULY, 1996.

19 
20 ED MCLEAN
21 District Judge


JOHN S. HENSON
District Judge

22 
23 JOHN W. LARSON
24 District Judge


DOUGLAS G. HARKIN
District Judge

REVISED (5/96)**MONTANA FOURTH JUDICIAL DISTRICT
CHILD VISITATION GUIDELINES**

A powerful cause of stress, suffering, and maladjustment in children of divorce is not simply the divorce itself, but continuing conflict between the parents before, during and after the divorce. To minimize conflict over the children, the parents should agree on a parenting arrangement that is most conducive to the children having frequent and meaningful contact with both parents with as little conflict as possible. When parents' maturity, personality and communication skills are adequate, the ideal arrangement is reasonable visitation upon reasonable notice, since that provides the greatest flexibility. The next best arrangement is a detailed visitation agreement made by the parents to fit their particular needs and, more importantly, the needs of the children. If the parents are unable to agree, however, the following guidelines will help the parents in knowing what the presiding judge in the Fourth Judicial District believes are generally reasonable, unless special circumstances require a different arrangement. (See Paragraph 1.17 below.) Unless these guidelines are incorporated in a court order, they are not compulsory rules, only a general direction for parents. In the event visitation becomes an issue in court, the judge reserves the right to set whatever visitation schedule best meets the needs of the children in that case.

1. GENERAL RULES

Parents should always avoid speaking negatively about the other and should firmly discourage such conduct by relatives or friends. In fact, the parents should speak in positive terms about the other parent in the presence of the children. Each parent should encourage the children to respect the other. Children should never be used by one parent to spy on the other. The basic rules of conduct and discipline established by the custodial parent should be the base-line standard for both parents and any step-parents, and consistently enforced by all, so that the children do not receive mixed signals.

Children will benefit from continued contact with all relatives and family friends on both sides of the family for whom they feel affection. Such relationships should be protected and encouraged. But relatives, like, parents, need to avoid being critical of either parent in front of the children. Parents should have their children maintain ties with both the maternal and paternal relatives. In Montana grandparents have a legal right to reasonable visitation with their grandchildren, if it is in their best interests. Usually the children will visit with the paternal relatives during times the children are with their father and with the maternal relatives during times they are with their mother.

Parents should be discouraged from making residential changes that are disruptive to a child's lifestyle, where the parents have been or are going through a contentious divorce/custody case.

When the parents have joint custody of a child or at any time prior to the entry of a decree, and both parents reside in the Fourth Judicial District, the Court will consider a change of the child's residence to a location outside the Fourth Judicial District as having a significant effect upon the child's relationship to family members and others and adjustment to his/her home, school, and community. When the custodial parent moves out of the Fourth Judicial District, the child's residence shall not be moved outside the Fourth Judicial district without an order from the Court after hearing or upon written stipulation of the parties that is approved by the Court. The Court will consider removing the child from the Fourth Judicial District as not being a positive development for the child absent special circumstances which must be approved by the Court in advance of the move.

In cases where both parents resided in the same community at the time of separation, and then one parent left the area, thus changing the visitation pattern, the court will consider imposing the travel costs for the children necessary to facilitate future visits on the parent who moved. The court will also consider other factors, however, such as the economic circumstances of the parents and the reasons prompting the move.

1.10 Visitation a Shared Experience. Because it is intended that visitation be a shared experience between siblings and, unless these Guidelines, a court order, or circumstances, such as age, illness, or the particular event, suggest otherwise, all of the children shall participate in any particular visitation.

1.11 Telephone Communication. Telephone calls between parent and child shall be liberally permitted at reasonable hours and at the expense of the calling parent. The custodial parent may call the children at reasonable hours during those periods the children are on visitation. The children may, of course, call either parent, though at reasonable hours, frequencies and at the cost of the parent called if it is a long distance call. During long vacations the parent with whom the child is on vacation is only required to make the child available to telephone calls every five days. At all other times the parent the child is with shall not refuse to answer the phone or turn off the phone in order to deny the other parent telephone contact. If a parent uses an answering machine, messages left on the machine for the child should be returned. Parents should agree on a specified time for calls to the children so that the children will be made available.

1.12 Mail Contact. Parents have an unrestricted right to send cards, letters and packages to their children. The children also have the same right with their parents. Neither parent should interfere with this right.

1.13 Privacy of Residence. A parent may not enter the residence of the other except by express invitation of the resident parent, regardless of whether a parent retains a property interest in the residence of the other. Accordingly, the children shall be picked up and returned to the front entrance of the appropriate residence. The parent dropping the children off should not leave until the children are safely inside. Parents should refrain from surprise visits to the other parent's home. A parent's time with the children is their own, and the children's time with that parent is equally private.

1.14 Children Under Age Five. Infants (children under eighteen months of age) and toddlers (eighteen months to three years) have a great need for continuous contact with the primary caretaker who provides a sense of security, nurturing and predictability. Generally overnight visits for infants and toddlers are not recommended unless the noncustodial parent is very closely attached to the child and is able to provide primary care. Older preschool age children (three to five) are able to tolerate limited separations from the primary caretaker. The following guidelines for children under age five are designed to take into account the child's developmental milestones as a basis for visitation. Since children mature at different rates these may need to be adjusted to fit the child's unique circumstances. These guidelines may not apply to those instances where the parents are truly sharing equally all the caretaking responsibilities for the child and the child is equally attached to both parents. Yet in the majority of situations where the custodial parent has been the primary caretaker and the noncustodial parent has maintained a continuous relationship with the child but has not shared equally in child caretaking the following guidelines should generally apply:

A. Infants " Birth to Six Months. Children need to have affectionate bonds with both parents. Overnight visits are not recommended. Time with the absent parent should be spent where the child lives, as going back and forth between homes causes tension for the child. The infant's eating and sleeping routine should not be interrupted. Alternate parenting plans: (1) Three two-hour visits per week, with one weekend day for six hours; or (2) Three two-hour visits per week, with one overnight on a weekend for no longer than a twelve hour period, if the child is not breast feeding and the noncustodial parent is capable of providing primary care.

B. Infants " Six to Eighteen Months. Predictability and routine are important at this age. Overnight visits are still not recommended, but can be considered if the infant is going with older brothers or sisters the infant knows and trusts. Alternate parenting plans: (1) Three, three-hour visits per week with one weekend day for six hours; or (2) Same as (1), but with one overnight not to exceed twelve hours, if the child is not breast feeding and the noncustodial parent is capable of providing primary care; or (3) Child spends time in alternate homes, but spends significantly more time at one of them and no more than two twelve-hour overnights per week at the other. This arrangement should be considered only for mature, adaptable children and very cooperative parents.

C. Toddlers " Eighteen to Thirty-Six Months. Children start to learn that things and people continue to exist even when the child can't see them. A common fear is that the care-taking parent will disappear and they may cry when a parent leaves them. Longer periods with the absent parent can begin. Short visits (2-4 hours) away from the child's home are permissible, however, the child needs to take favorite things with him/her (blanket or stuffed animal or pacifier, etc.). At this age children do not understand time, or days of the week, or that they will see mother or father "tomorrow" or in "two days" or on "Sunday." When away from the care-taking parent they may feel anger and a powerful sense of loss and often do not understand why mother or father isn't there. Alternate parenting plans: (1) The noncustodial parent has the child

E. **Kidnapping/Threats.** Parents who have kidnapped or hidden the children or threatened to do so should have no visitation or only supervised visits.

F. **Breast Feeding Child.** Forcibly weaning a child, whether breast feeding or bottle feeding, during the upheaval of parental separation is not appropriate for the physical health or emotional well-being of the child. Until weaning has occurred without forcing, a nursing infant should have visits of only a few hours each. A parent should not use breast feeding beyond the normal weaning age as a means to deprive the other parent of visitation.

G. **A Parent's New Relationship.** Parents should be sensitive to the danger of exposing the children too quickly to new relationships while they are still adjusting to the trauma of their parent's separation and divorce.

H. **Religious Holidays and Native American Ceremonies.** Parents should respect their children's needs to be raised in their faith and in keeping with their cultural heritage and cooperate with each other on visitation to achieve these goals. These goals should not be used to deprive the noncustodial parent of visitation.

I. **Other.** The Court may limit or deny visitation to parents who show neglectful, impulsive, immoral, criminal, assaultive or risk-taking behavior with or in the presence of the children.

2. VISITATION OF CHILDREN OVER AGE FIVE WHEN THERE IS SOLE CUSTODY OR PRIMARY PHYSICAL CUSTODY AND PARENTS RESIDE NO MORE THAN 200 MILES APART

2.1 **Weekends.** Alternate weekends from Friday at 5:30 P.M. to Sunday at 7 P.M.; the starting and ending times may change to fit the parents' schedules. Or an equivalent period of time if the visiting parent is not available on weekends and the child does not miss school. In addition, if time and distance allow, one or two midweek visits of two to three hours. All transportation for the midweek visits are the responsibility of the visiting parent.

2.2 **Mother's Day - Father's Day.** The alternate weekends will be shifted, exchanged or arranged so that the children are with their mother each Mother's Day weekend and with their father each Father's Day weekend. Conflicts between these special weekends and regular visitation shall be resolved pursuant to Paragraph 1.9.

2.3 **Extended Visitation.** One-half of the school summer vacation. At the option of the noncustodial parent, the time may be consecutive or it may be split into two blocks of time. If the child goes to summer school and it is impossible for the noncustodial parent to schedule this visitation time other than during summer school, that parent may elect to take the time when the child is in summer school and transport the child to the summer school session at the child's school or an equivalent summer school session in the noncustodial parent's community.

2.4 **Winter (Christmas) Vacation.** One-half the school winter vacation, a period which begins the evening the child is released from school and continues to the evening of the day before the child will return to school. If the parents cannot agree on the division of this period, the noncustodial parent shall have the first half in even-number years. If the parents live in the same community, in those years when Christmas does not fall in a parent's week, that parent shall have from Noon to 9 P.M. on Christmas Day. For toddlers and preschool age children, when the parents live in the same community, the parents should alternate each year Christmas Eve and Christmas Day so that the children spend equal time with each parent during this holiday period.

2.5 **Holidays.** Parents shall alternate the following holiday weekends: Easter, Memorial Day, the 4th of July, Labor Day and Thanksgiving. Thanksgiving will begin on Wednesday evening and end on Sunday evening; Memorial Day and Labor Day Weekends will begin on Friday and end on Monday evening; Easter weekend will begin on Thursday evening and end on Sunday evening; while the 4th of July, when it does not fall on a weekend, shall include the weekend closest to the 4th. Holiday weekends begin at 5:30 P.M. and end at 7 P.M. on the appropriate days.

2.6 **Children's Birthdays.** Like the holidays, a child's birthday shall be alternated annually between the parents. If the birthday falls on a weekend, it shall extend to the full weekend, and any resulting conflict with regular visitation shall be resolved pursuant to Paragraph 1.9. If the birthday falls on a weekday, it shall be celebrated from 3 P.M. to 9 P.M. (or so much of that period as the noncustodial parent elects to use).

Divorce

STATUTORY PROVISIONS FOR DETERMINING CHILD SUPPORT AWARDS *

767.25 Child Support. (1) Whenever the court approves a stipulation for child support under s. 767.10, enters a judgment of annulment, divorce or legal separation, or enters an order or a judgment in an action under s. 767.02(1)(f) or (j) or 767.08, the court shall order either or both parents to pay an amount reasonable or necessary to fulfill a duty to support a child and shall specifically assign responsibility for and direct the manner of payment of the child's health care expenses. The support amount may be expressed as a percentage of parental income or as a fixed sum.

(1j) Except as provided in sub. (1m), the court shall determine child support payments by using the percentage standard established by the department of health and social services under s. 46.25(9)(a).

(1m) Upon request by a party, the court may modify the amount of child support payments determined under sub. (1j) if, after considering the following factors, the court finds by the greater weight of the credible evidence that use of the percentage standard is unfair to the child or to any of the parties:

- (a) The financial resources of the child.
- (b) The financial resources of both parents as determined under s. 767.255.
- (bj) Maintenance received by either party.
- (bp) The needs of each party in order to support himself or herself at a level equal to or greater than that established under 42 USC 9902(2).
- (bz) The needs of any person, other than the child, whom either party is legally obligated to support.
- (c) The standard of living the child would have enjoyed had the marriage not ended in annulment, divorce or legal separation.
- (d) The desirability that the custodian remain in the home as a full-time parent.
- (e) The cost of day care if the custodian works outside the home, or the value of custodial services performed by the custodian if the custodian remains in the home.
- (ej) If joint custody is awarded under s. 767.24(1)(b), any physical custody arrangement ordered or decided upon.
- (em) Extraordinary travel expenses incurred in exercising visitation rights under s. 767.245.
- (f) The physical, mental and emotional health needs of the child, including the costs of health insurance and uninsured health care for the child.
- (g) The child's educational needs.
- (h) The tax consequences to each party.
- (hm) The best interests of the child.
- (i) Any other factors which the court in each case determines are relevant.
- (in) If the court finds under sub. (1m) that use of the percentage standard is unfair to the child or the requesting party, the court:

(a) May consider the guidelines for the determination of child support established by the department of health and social services under s. 46.25(9)(b), in modifying the amount of child support payments determined under sub. (1j).

(b) Shall state in writing or on the record its reasons for finding that use of the percentage standard is unfair to the child or the party, its reasons for the amount of the modification and the basis for the modification.

(1r) An order under this section shall direct the person with custody of a minor child to contribute an amount determined under s. 46.257(6)(b) in the manner determined by the department of health and social services, if that person receives benefits under s. 46.257. This subsection applies between October 1, 1986 and September 30, 1994.

(2) The court may protect and promote the best interests of the minor children by setting aside a portion of the child support which either party is ordered to pay in a separate fund or trust for the support, education and welfare of such children.

(3) Violation of visitation rights by the custodial parent shall not constitute reason for failure to meet child support obligations.

(4) The court shall order either party or both to pay for the support of any child of the parties who is less than 19 years old and is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent.

(5) Liability for past support shall be limited to the period after commencement of the action.

(6) A party ordered to pay child support under this section shall pay simple interest at the rate of 1.5% per month on any amount unpaid, commencing the first day of the 2nd month after the month in which the amount was due. Interest under this subsection is in lieu of interest computed under

s. 807.01(4), 814.04(4) or 815.05(8) and is paid to the clerk of court under s. 767.29. The clerk of court shall apply all payments received for child support as follows:

- (a) First, to payment of child support due within the calendar month during which the payment is received.
- (b) Second, to payment of unpaid child support due before the payment is received.
- (c) Third, to payment of interest accruing on unpaid child support.

* As affected by 1985 Wisconsin Act 29, eff. 7/1/87, for divorce, separation; annulment and independent support actions.

9/30/87

WISCONSIN DEPARTMENT OF HEALTH AND
SOCIAL SERVICES PERCENTAGE OF GROSS INCOME
STANDARD FOR CHILD SUPPORT

AUTHORITY AND PURPOSE

Wis. Stats. sec. 46.25(9)(a) required the Department to adopt and publish a standard for courts to use in determining a child support obligation under Wis. Stats. sec. 767.25 and 767.51 based upon a percentage of the gross income and assets of either or both parents. Chapter HSS 80 of the Wisconsin Administrative Code defines the monthly income upon which the support obligation is based, includes a percentage of income for computing support payments based upon a number of children, and sets forth optional procedures for applying the percentage standard in shared-time, split-custody and serial family cases.

APPLICABILITY

The percentage standard applies to any temporary or final order for child support in any action affecting the family, including stipulated child support settlements. When used to calculate family support, the amount determined under the standard should be increased by the amount necessary to provide a net family support payment after state and federal income taxes are paid, of at least the amount of a child support payment under the standard. At the court's discretion, upon a finding of a substantial change of circumstances, the percentage standard may also apply to revisions of judgment under s. 767.32, Stats.

DEFINITION OF INCOME AND ASSETS

The percentage standard applies to gross income which is defined as all income that is derived from any source and realized in any form, whether money, property or services, and whether reported as total income on the payer's federal tax return or exempt from being taxed under federal law. Gross income is adjusted by adding wages paid to dependent household members, the business asset depreciation allowance and the excess of accelerated over straight-line depreciation and subtracting public assistance and child and spousal support received from previous marriages.

Income may be imputed to assets which are underproductive or to which income has been diverted to avoid paying child support or from which income is necessary to maintain the child(ren) at the economic level they would enjoy if they were living with their parents, and which exceeds the actual earnings of the assets.

THE PERCENTAGE STANDARD

The percentages are:

- 17% for one child
- 25% for two children
- 29% for three children
- 31% for four children
- 34% for five or more children

Wis. Stats. sec. 767.23(1)(c), 767.25(1) and 767.51(4) permit temporary and

P. 5, l. 10-17

13am 14

Strike:

lines ~~10-17~~

Insert:

"The case registry shall be jointly administered with one representative designated by the Director of DPHHS, one representative designated by the Chief Justice of the Montana Supreme Court and one representative designated by the President of the Montana Clerks of District Court Association. Administrative representatives from CSED, the Montana Supreme Court Administrator, and the data processing division of Missoula County shall also be advisors to the Board.

II. DOCKETING JUDGMENTS, ISSUANCE OF WRITS OF EXECUTION AND LIENS

Several sections, including Sections 14-20, 48, 54 and 56, deal with the new approach to administrative docketing of orders, be they district court or administrative to the effect that they will have the same full force and effect without filing with the district court. Section 54 creates a new state-wide property lien merely by filing with CSED. New definitions of executions in light of this procedure seem to indicate that the central registry will operate on a completely separate track, giving the agency the same powers as if the judgments had been docketed with the district court. Given the confusion and lack of coordination which has existed in the past, as well as the need for easily accessible information on the status of child support orders and judgments by both the district courts and CSED as well as those who are concerned with the effect of judgments, i.e., attorneys, title companies, etc., joint development as well as administration of the central registry seem logical and necessary. Further, nothing in the federal act precludes such coordination and nothing in the uniform acts requires the separate stand-alone track for CSED.

Recommendation: Require filings of orders and judgments to be with the district court

until the next session when the case registry system should be more fully developed, if not fully operational. (Strike Sections 48, 54 and 56.)

III. DUE PROCESS AND FAIRNESS

Several issues concerning the administrative hearings and powers of hearing officers required by §40-5-226, MCA, are extraordinary and unusual, particularly in light of the significance of the matters to be determined. See Section 47, P. 52. These include lack of: (1) in person hearings; (2) time line for scheduling or decision; (3) notice by certified mail rather than in accordance with the Rules of Civil Procedure; and (4) broad direct contempt powers. Further, a presumption of telephonic conferences is established in the new Section 47. Previously, time lines in Sections 47 and 75, are deleted for scheduling hearings and deciding cases. (P. 52, l. 9; P. 53, l. 22; P. 81, l. 9-10). Technical specific notices are required in Section 75. However, some consideration should be given to the effort by non-lawyers to respond with general objections. Due process and considerations of fairness must be included in child support enforcement. A copy of two recent decisions of the Montana Supreme Court are attached.

In Section 59, P. 68-70, the clerk of court is to issue an order for income deductions. The basis for this procedure, according to the Department's explanation, is to provide for withholding without the need for judicial or administrative hearing. At the same time, relief from the order is provided in subsection (4) after "court hearing."

Recommendations:

1. (a) realistic time lines (3-6 months); (b) opportunities for fair notice (service in

accordance with the Rules of Civil Procedure; and (c) in person hearings;

2. Allow general requests for hearings or disputes, rather than hypertechnical pleadings;
3. Restrict contempt powers of the agency until the need is demonstrated;
4. Section 59, P. 69, I. 9-10. Substitute "district court temporary order" with "order to show cause" instead of the clerk of court order, there is no basis or history in Montana for orders from the clerk of court that would then be reviewed by District Court Judges.

IV. CHILD SUPPORT GUIDELINES

These guidelines are established in §40-5-209, MCA. The current guidelines developed over a period of years are very difficult to implement and have resulted in immense confusion, litigation, as well as heightening the level of dispute in many contested dissolution proceedings with children. A much simpler approach to developing child support amounts is utilized in many states, including Wisconsin. While it is currently outside the scope of this bill, S.B. 374 goes well beyond federal requirements. Given the intense interest of the Senate Finance and Claims Committee in this issue, the opportunity is presented to focus child support guidelines on an approach that will simplify and expedite the process.

Wisconsin uses gross income (actual expense deducted, depreciation added back in.)

One child	17%	Four children	31%
Two children	25%	Five or more	32%
Three children	29%		

Recommendation: We recommend Wisconsin.

JOINT RESOLUTION NO.

INTRODUCED BY _____

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE MONTANA TO STUDY THE CREATION OF A CENTRALIZED INDEXED ELECTRONIC LIEN SYSTEM FOR THE REPORTING AND FILING OF ALL LIENS IN MONTANA; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 56TH LEGISLATURE.

WHEREAS, there are liens for crop dusting, farm laborers, hail insurance, seed, grain, construction, loggers, agisters, oil and gas wells and pipelines, labor and material, liquor, hotels, passenger carriers, storage, beer, boats, child support, smoke abatement tax, condominiums, dams and reservoirs, estates and probate, factors, freight carriers, frozen food lockers, gambling, health facilities, housing, landlords, livestock, mechanics, Medicaid, storm sewers, micro business developments, mines and mining, minors, physicians, physical therapists, chiropractors, dentists, licensed professional counselors, and hospitals, rail roads, real estate, swathers, table wine distributors, tax, threshers, time share units, title, vendors, video gambling machines, warehousemen, water, wineries, etc.; and

WHEREAS, liens are filed by lenders, vendors, businesses, suppliers, builders, etc.; and

WHEREAS, millions of various liens are on file at the 56 counties and numerous state agencies and hundreds of thousands are filed annually; and

WHEREAS, a centralized electronic indexed system which may be on the Internet would allow access to this public information easily; and

WHEREAS, liens now filed by mail and fax could be filed electronically more efficiently and less costly; and

WHEREAS, the easy and immediate access and filing of liens would facilitate the transfer of property; and

WHEREAS, knowledge of liens would facilitate enforcement by state and local officials; and

WHEREAS, buyers of property upon which there is a lien would be forewarned; and

WHEREAS, other states such as Colorado have developed a centralized electronic lien filing system allowing filings at 64 offices for the convenience of citizens, businesses, and consumers; and

WHEREAS, the Colorado system has a state appointed board to oversee the system, with only two state employees, which is administered privately by competitive bid from data processors.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study:

- (1) the possibility of creating a centralized electronic lien indexing and filing system;
- (2) the possibility of electronically sharing lien information with neighboring states to aid enforcement of liens;
- (3) the costs, benefits, and statutory or other changes necessary to create a centralized electronic system; and

BE IT FURTHER RESOLVED, that the interim committee report their findings and recommendations to the 56th legislature for legislative consideration.

-END-

GLACIER COUNTY TITLE CO., INC.

P.O. Box 10
5 West Main
Cut Bank, MT 59427

Phone (406) 873-4141
FAX (406) 873-5207

February 28, 1997

Senator Del Gage
Capitol Station
Helena, MT 59620

SENATE FINANCE AND CLAIMS
FILE NO. 4
DATE 3/11/97
BILL NO. 50374

Re: Senate Bill 374
Hearing in Senate Finance and Claims
March 6, 1997 8:00 A.M., Room 108

Dear Del:

I am writing concerning provisions in Senate Bill 374. While parts of that Senate Bill are mandated by federal statute, there are non-mandated sections of this bill which greatly affect marketability of land titles, increase the costs of checking land titles, and liabilities of title companies, and cause unreasonable risk to good faith purchasers of land.

I am enclosing a copy of the proposed amendment to Section 40-5-227, M.C.A. This exception if passed into law would provide that a final administrative order of the Department is effective and enforceable to the same degree as a District Court order without filing and docketing the order in the District Court.

That is a very unfair provision. Probably it most unfair to purchasers of land, because they may be purchasing their home, without notice that there is a hidden lien, that is not filed or docketed in the District Court, as required for other liens. A good faith purchaser might move into his home after purchasing the same, to find that he does not really own it.

The passage of a section like this complicates the lives of title insurance companies, real estate agents, and purchasers of property. It is contrary to our system of notice recording, to perfect good faith purchasers. This section should provide that a final administrative order does not operate as a lien against real property, without filing and docketing the order in the District Court.

60374

February 28, 1997
Page Two

I do feel this is an important provision that most people are not aware of and ask that you not allow its passage in the present form. Thanks for your consideration.

Very truly yours,

Richard A. Shors

RAS:kj

Amendments to Senate Bill No. 374
Second Reading Copy

AMENDMENT NO. 5
DATE 3/11/97
BILL NO. SB374

Requested by Senator Holden
For the Committee on Finance and Claims

Prepared by Taryn Purdy
March 10, 1997

1. Page 17, line 15.
Following: "~~(a)~~"
Insert: "(a)"

2. Page 17, following line 18.
Insert: "(b) The employer shall treat an income withholding order issued in another state that appears regular on its face as if it had been issued by a tribunal of this state. An employer may contact the department of public health and human services to ascertain validity of the order prior to implementing an income withholding order."

{Legislative Fiscal Division

444-2986}



SENATE BILL NO. AND CLAIMS

SENATE BILL NO. 6

DATE 3/11/97

BILL NO. SB374

SENATE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 374
Senator Holden

February 25, 1997 8:12 am

Mr. Chairman: I move to amend Senate Bill 374 (second reading copy -- yellow).

ADOPT

REJECT

Signed: Ric Holden

Senator Holden

That such amendments read:

1. Page 27, line 9.

Following: "court."

Insert: "An obligor may request an income withholding exception directly from the department of public health and human services. The department shall grant a withholding exception unless it explains the reasons for not granting the exception."

2. Page 45.

Following: line 4

Insert: "(6) For purposes of credit rating reports, the department shall indicate if the withholding garnishment is for delinquent support or for regular monthly support obligations."

3. Page 54, line 15.

Following: "officer."

Insert: "An obligor may request an income withholding exception directly from the department. The department shall grant a withholding exception unless it explains the reasons for not granting the exception."

4. Page 97, line 14.

Following: "court."

Insert: "An obligor may request an income withholding exception directly from the department of public health and human services. The department shall grant a withholding exception unless it explains the reasons for not granting the exception."

-END-

T

Amd. Coord.

440812CW.STS

#7

New Section -

The Supreme Court Administrator
shall coordinate development of the
federal grant guidelines and coordinate
applications for grants by Montana Judicial
Districts pursuant to ^{42 USC} § 669 B of ~~PRWORA~~

40-5-209 is amended as follows:

New
Section

following: amounts

Insert: using the method currently implemented
in the State of Wisconsin

W.

SERVICES AND CLAIMS

EXHIBIT NO. 8

DATE 3/1/97

BILL NO. 58374

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE

ROLL CALL *SB374 subcommittee*

DATE *4/3/11/97*

NAME	PRESENT	ABSENT	EXCUSED
SEN. CHUCK SWYSGOOD, CHAIRMAN			
SEN. TOM KEATING, VICE CHAIRMAN	✓		
SEN. LARRY BAER	✓		
SEN. TOM BECK			
SEN. JIM BURNETT			
SEN. B.V. "CHRIS" CHRISTIAENS			
SEN. EVE FRANKLIN			
SEN. LOREN JENKINS			
SEN. GREG JERGESON	✓		
SEN. J. D. LYNCH			
SEN. DALE MAHLUM	✓		
SEN. KEN MILLER			
SEN. ARNIE MOHL			
SEN. LINDA NELSON			
SEN. MIKE TAYLOR			
SEN. DARYL TOEWS			
SEN. MIGNON WATERMAN			✓
<i>Sen. Mike Halligan</i>			✓
<i>Sen. Ric Jorden</i>	9:53		

SEN:1997
wp.rollcall.man
CS-09

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

FINANCE & CLAIMS SUBCOMMITTEE ON SB 374

Call to Order: By CHAIRMAN TOM KEATING, on March 13, 1997, at 8:12 a.m., in Room 108.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Larry Baer (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Greg Jergeson (D)
Sen. Dale Mahlum (R)
Sen. Mignon Waterman (D)

Members Excused: None

Members Absent: None

Staff Present: Taryn Purdy, Legislative Fiscal Division
Sharon Cummings, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

CHAIRMAN KEATING explained what happened at the last subcommittee meeting.

SEN. RIC HOLDEN We adopted an amendment for page 17, I'd like to introduce a different amendment dealing with the same subject.

SEN. KEATING I believe this is one of the issues the bankers were concerned with.

Amy Pfeifer, Department of Public Health and Human Services (DPHHS) (EXHIBIT #1) handed out and explained.

SEN. LARRY BAER Why should Montanans be mandated to an order of another state without the opportunity to bring it before one of our state courts to see if it is valid? This would preclude that. SEN. HOLDEN I understand your concern with that, under federal statute we have to honor those determinations.

SEN. KEATING How would the department determine that the order was issued by an appropriate authority? Mary Ann Wellbank, DPHHS We would talk with the issuing authority. It would probably be a clerk of court or a child support agency in another state.

SEN. BAER The point I'm trying to make is that a Montanan has to comply with an order from an out-of-state court without having the opportunity to challenge that order in a Montana court.

SEN. KEATING I don't see how the language here would preclude someone from going to a Montana court with an order from a foreign court and asking for the validity of it or whether compliance is required under the law.

SEN. MIGNON WATERMAN Before there were federal regulations we had Montanans looking for an out-of-state court that wouldn't honor Montana child support orders. This is also protecting Montana residents.

SEN. BAER It's not why they are doing it, it is what they are doing.

SEN. MIKE HALLIGAN Does the agency get a certified copy of the order? Ms. Wellbank When another state refers the full case to us they are required to send us a certified copy of the order. In this type of case the employer will receive the original withholding order and the obligor will get a copy of it. Many states have a county by county system, this allows states to bypass the state child support agency and go directly to the employer.

Motion/Vote: SEN. HOLDEN MOVES TO AMEND SB 374 WITH (EXHIBIT #1). THE MOTION CARRIED WITH SEN. BAER & HALLIGAN VOTING NO.

Taryn Purdy, Legislative Fiscal Division (LFD) (EXHIBIT #2) handed out and explained. (EXHIBIT #3) handed out.

SEN. KEATING (EXHIBIT #4) shows the non-mandated sections of the bill.

{Tape: 1; Side: A; Approx. Time Count: 8:33; Comments: None.}

SEN. HOLDEN Can you recap what the non-mandated changes are on page 49? Ms. Pfeifer This is Section 46 on the non-mandated list.

SEN. HALLIGAN What if neither party has access to health insurance? Ms. Pfeifer 40-5-801 is the provision of the code that deals with medical support orders. We are bound by that scheme.

SEN. KEATING Please explain the non-mandated change in Section 47. Ms. Pfeifer This is our provision regarding administrative hearings.

SEN. HALLIGAN What is the timing issue for someone requesting an in-person hearing because the case was substantially prejudiced by the telephonic hearing? Ms. Pfeifer Usually the hearings officer asks at the end of the hearing if they are interested in

an in-person hearing. No one has requested this after a decision has been made.

SEN. HALLIGAN You may want to put a time limit in your rules.
Ms. Pfeifer I suggest it be put in statute.

SEN. KEATING Can a person request an in-person hearing in lieu of the telephonic hearing? Ms. Pfeiffer Yes, with the amendment you approved. We had over 600 hearing by telephone and 20 in-person hearings last year.

Ms. Purdy The amendment that was passed dealt with page 80, line 28. This section has not been amended.

Motion/Vote: SEN. BAER MOVES TO AMEND SB 374 BY CHANGING THE SECOND "AND" TO "OR" ON PAGE 52, LINE 10. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. BAER MOVES TO RECONSIDER OUR ACTION ON AMENDING PAGE 53, LINE 22. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. BAER MOVES TO AMEND SB 374 BY ADDING ", ANY POST HEARING BRIEFS ARE RECEIVED" AFTER "CONCLUDED" ON PAGE 53, LINE 22. THE MOTION CARRIED UNANIMOUSLY.

{Tape: 1; Side: A; Approx. Time Count: 8:52; Comments: None.}

SEN. HOLDEN (EXHIBIT #5) explained.

Motion/Vote: SEN. HOLDEN MOVES TO AMEND SB 374 WITH (EXHIBIT #5). THE MOTION CARRIED UNANIMOUSLY.

SEN. KEATING Section 48, people had concern about not filing liens and docketing the order in the district court. This is language addressing that concern. Ms. Pfeifer (EXHIBIT #6) explained.

SEN. KEATING What is an administrative order, could it include a lien? Ms. Pfeifer Yes.

{Tape: 1; Side: B; Approx. Time Count: 9:01; Comments: None.}

SEN. KEATING If an administrative order includes a lien, before the lien is enforceable does it have to be filed? Ms. Pfeifer This is one way to do it.

SEN. KEATING Is a lien in an administrative order enforceable without being docketed or filed? Ms. Pfeifer No.

SEN. KEATING This language says an administrative order is effective and enforceable without filing, if it contains a lien is that lien effective and enforceable without filing it? How do we know the answer is no? Ms. Pfeifer This is in 40-5-248.

SEN. HOLDEN We directed people to statute in an earlier amendment, should we do that now?

Motion/Vote: **SEN. WATERMAN** MOVES TO AMEND SB 374 WITH (EXHIBIT #6) ADDING ", INCLUDING 40-5-248" AT THE END OF ITEM #2. THE MOTION CARRIED UNANIMOUSLY.

{Tape: 1; Side: B; Approx. Time Count: 9:18; Comments: None.}

Ms. Pfeifer Section 61 deals with income withholding orders.

SEN. KEATING I've had calls from fathers who were current with their payments and were garnished. The explanation was that they had been delinquent at one time and the feds required they have mandatory withholding. **Ms. Wellbank** It is a federal and state requirement that once someone is delinquent they stay in income withholding even if they make things up. **Ms. Pfeifer** That has been in force since 1984.

SEN. HALLIGAN What about seasonal employees or someone who changes jobs every 3-4 months? **Ms. Pfeifer** You could ask the judge to modify the support order to eliminate the immediate withholding language.

SEN. KEATING An employer complained that having discharged a delinquent obligor and then rehiring that person and not automatically withholding the employer became responsible for the payment. **Ms. Pfeifer** That is existing law. The law says the withholding order is valid until terminated by the department. An employer should not throw away the withholding order when they fire that employee. **Ms. Wellbank** The employer has the right to a hearing, we would present evidence of how many times we contacted him. This would never be an automatic fine. We're very sensitive about going after employers. This has to be a blatant violation of the provision before we go forward with anything.

SEN. HOLDEN If an order is sent to an employer and that employee quits for 4-5 months, would the department send another notice when he was rehired or would you hold him to the original notice. **Ms. Wellbank** We match with Department of Labor and Industry records when they are 90-120 days late. In the example you gave we wouldn't know for many months if he was rehired. Usually we haven't terminated the order in the first place.

SEN. HOLDEN I think you need to reiterate to department personnel that if the caseworker discovers the employee quits and is rehired, you need to be sure to get another notice out to the employer to resolve these possible problems. **Ms. Pfeifer** Many employers are very good at contacting us.

SEN. BAER This seems to be a problem, do we need to address statute on this subject? **SEN. KEATING** We can make a recommendation to the full committee on this. There is a lot of

concern on the amount of workload we are putting on the employer with regards to notification, much of that is already in statute. If we want to do anything in that area, we would have to go back and address all of the statute dealing with notification by employers.

SEN. BAER I'd like to make a suggestion that this be looked at sometime in the future.

SEN. KEATING There are 400,000 wage earners in Montana, how many child support obligors are there in Montana? **Ms. Wellbank** Our caseload is about 44,000 and 27,000 are Montanan's subject to withholding. **Ms. Pfeifer** There are also private cases through the courts that we are not involved in. **Ms. Wellbank** The centralized system will help with this.

SEN. KEATING 12½% of the workers are driving these obligations on employers. I hope the department understands the employers frustration. **Ms. Wellbank** We've heard employers complaints and are sensitive to them. We send out a quarterly newsletter to employers and hired an employer liaison to solve these problems. I recently sent a letter to my supervisory staff reminding them that employers are a key part of the system and we need to treat them with kid gloves unless they are blatantly out of compliance.

Ms. Purdy Items #5,6,7, & 8 of Amendment #sb037403.a35 (EXHIBIT #7) explained.

{Tape: 2; Side: A; Approx. Time Count: 9:45; Comments: None.}

SEN. HOLDEN Please explain the last sentence on (EXHIBIT #8). **Ms. Pfeifer** (EXHIBIT #8) explained. **Ms. Wellbank** The department just lost a major Supreme Court decision that dealt with a hearing that lasted years and years. The custodial parent in this case maintains she is owed \$20,000-\$78,000 and because we didn't get the income withholding part done in a timely manner she is unable to collect that money. This is to help with this type of problem.

SEN. BAER This is a due process requirement, if we allow this additional language there are no consequences for the department not complying with this due process requirement.

SEN. GREG JERGESON That additional sentence negates the intent that it be concluded within 60 days. The hearings officer should be able to make a decision within 60 days.

SEN. HALLIGAN Who determines the good cause? **Ms. Pfeifer** The hearings officer would determine good cause.

Ms. Wellbank I understand the concerns about this. The reason we took the timelines out of the language in the first place was because we never put them in to be intended as a due process requirement. They were originally in statute to conform with

federal regulations that require us to close a certain percentage of our cases within a certain number of days. It has recently been interpreted as a due process requirement which is why we wanted to remove those timeframes. We don't want to preclude the custodial parent from being able to collect because of our mistakes.

SEN. JERGESON This should not drag on forever and the department should get these resolved quickly, 60 days seems reasonably.

SEN. BAER I was under the assumption that good cause would have to be determined by an independent tribunal, i.e. district court judge. If you allow the good cause to be determined by the department's hearing officer it leave it wide open for an arbitrary and capricious decision favoring the department. **Ms. Pfeifer** The orders are subject to judicial review. This would initially be done by the hearing officer.

SEN. BAER I'd be happy if the ultimate decision is within the jurisdiction of the court but I want to be assured of that.

SEN. DALE MAHLUM It bothers me that parties may not know how to go to the next step if they don't like their hearing. I feel the hearing officer is like a God.

SEN. HALLIGAN The issue of when income withholding should occur needs to be addressed.

SEN. JERGESON Income withholding is the way to make sure child support gets paid, why should that take more than 60 days.

{Tape: 2; Side: A; Approx. Time Count: 9:59; Comments: None.}

Ms. Pfeifer The federal requirement is 45 days and 75-95% of our cases have to be done in that timeframe. There are a few cases that might go beyond this. Our hearing officers are very good at drawing out information from the parties involved and make sure everyone gets an opportunity to say whatever might be remotely relevant to the action.

Motion/Vote: SEN. HOLDEN MOVES TO AMEND SB 374 WITH AMENDMENT #SB037403.A35 (EXHIBIT #7) ITEMS #5,6,7 & 8. THE MOTION CARRIED WITH SEN. HALLIGAN VOTING NO.

Ms. Pfeifer Non-mandated section 72 explained. Section 83 deals with license suspension. This is an existing process in Montana, adopted in 1993. The federal law requires the state to have a license suspension process and includes hunting licenses. We aren't suspending all hunting and fishing licenses, only centrally sold FWP licenses.

SEN. MAHLUM What if a person needs game for food to support his family? **Ms. Pfeifer** There is a hardship provision in our existing license suspension process.

SEN. WATERMAN How far behind is a person before their license is suspended? **Ms. Pfeifer** 6 months or more.

SEN. MAHLUM Why do we take a person's license? **SEN. HOLDEN** Hunting is a good way to address this issue in Montana. I think this is effective.

SEN. JERGESON I believe a person who bids \$100,000 on a special goat hunt should be current on their child support. Is there an age cutoff on license suspension? **Ms. Pfeifer** This enforcement remedy applies to obligors who are 6 months behind in payments.

SEN. BAER This is a Title IV-D amendment, a requirement. We've been told IV-D mandates are all or nothing, how can we modify this? **Ms. Pfeifer** This gives us a process to suspend recreational licenses. **Ms. Wellbank** It is a matter of interpretation and given our current state system there wasn't a way to enforce all the federal requirements.

{Tape: 2; Side: B; Approx. Time Count: 10:37; Comments: None.}

SEN. HOLDEN Section 99, page 107 talks about social security numbers for hunting licenses. I think the general public would accept a deadbeat dad losing his hunting privileges but I don't think they want to give FWP their social security numbers. **Ms. Pfeifer** This was worked out with FWP because they keep a lot of records and they want to make sure they are suspending the correct person's licenses. The drivers license number is currently on the application.

SEN. HOLDEN My social security number is not on my drivers license. With this everyone would have their social security number on their hunting license.

Motion: **SEN. HOLDEN MOVES TO AMEND SB 374 BY REMOVING SOCIAL SECURITY NUMBERS FROM RECREATIONAL LICENSE APPLICATIONS THROUGHOUT THE BILL.**

Robin Hein, Department of Fish, Wildlife and Parks (FWP) Social security number information will be kept confidential. We asked for it as a way to insure a proper match is made. In the past we've matched on name and date of birth and pulled two names from the drawing that should not have been pulled. Currently, social security numbers are optional on applications.

SEN. HOLDEN That was an honest mistake, if FWP wants social security numbers on their applications they should come to the legislature for this.

SEN. HALLIGAN What are the ways you give out information? Don't you have a connection with the Department of Revenue for checking residency requirements? **Ms. Hein** We are prohibited from giving any of our electronic information for purposes of mailing lists.

I don't believe we are checking residency requirements for DOR. Our database information is confidential.

SEN. JERGESON I'm not sure why this is such a big issue, people are always putting their social security number on applications.

SEN. WATERMAN I don't want to jeopardize this bill.

Ms. Wellbank This is not mandatory. We compared our 16,000 records on people delinquent 6 months or more with FWP's 300,000 records. Only two-thirds of their database has drivers license the same as social security numbers, we would have gotten 1,100 more matches to make a total of 4,446 matches. Each average delinquency is \$1,000, so \$4.4 million could have been leveraged instead of \$3 million. We routinely intercept FWP refunds through the State Auditor's office, the social security number would help to match that.

Motion/Vote: SEN. HOLDEN MAKES A SUBSTITUTE MOTION TO AMEND SB 374 BY STRIKING SECTIONS 99 & 100. THE MOTION CARRIED WITH SEN. JERGESON VOTING NO.

Ms. Purdy Item #1 on (EXHIBIT #7) addresses Judge Larson's concern. (EXHIBIT #9) is the department amendment on the case registry advisory board. Ms. Purdy explained both amendments.

Ms. Wellbank Item (v) of Item #1 in (EXHIBIT #7) states "a representative of the data processing division of Missoula County; and". I don't know if they would be a good representative for all the counties so we did not include that in our amendment (EXHIBIT #9)

SEN. WATERMAN Is there a county representative on this board?

Ms. Pfeifer There is a representative from the supreme court administrator, those are the people working with the counties.

SEN. MAHLUM If I remember right, Judge Larson was emphatic on having Missoula County on this board. SEN. KEATING Is Missoula County where we are beginning this automated process? Ms. Wellbank This is an issue between Judge Larson and myself. Missoula County is one of the larger counties in the state but Yellowstone and other counties are also large. The department has no objection to this but Missoula County may not be representative of the counties in Montana.

SEN. HALLIGAN I don't believe we should have Missoula County mentioned in statute. Could they be named as an ex officio member of the board?

SEN. HOLDEN Couldn't we change (v) to a county representative.

SEN. WATERMAN (ii) could name 2 clerks of court and Judge Larson could lobby for this position.

Ms. Wellbank You could state the supreme court administrator and another data processing representative.

SEN. JERGESON You need someone who understands data processing, perhaps it should be a representative from the information technology advisory council.

Motion: SEN. JERGESON MOVES TO AMEND ITEM #1 IN AMENDMENT #SB037403.A35 BY STRIKING SECTION (V) AND INSERTING "(V) A REPRESENTATIVE OF A COUNTY DATA PROCESSING DIVISION NOMINATED BY THE MONTANA ASSOCIATION OF COUNTIES."

SEN. BAER I don't think it is appropriate to name a private organization to make that determination in statute SEN. KEATING We've done that with other associations in this amendment. SEN. BAER There is too much controversy over MACO.

Vote: THE MOTION CARRIED WITH 4 AYE AND 3 NO.

Motion/Vote: SEN. JERGESON MOVES TO AMEND ITEM #1 IN AMENDMENT #SB037403.A35 BY INSERTING "," AFTER "POLICY". THE MOTION CARRIED UNANIMOUSLY.

{Tape: 2; Side: B; Approx. Time Count: 11:09; Comments: None.}

Motion/Vote: SEN. WATERMAN MOVES TO AMEND SB 374 WITH AMENDMENT #SB037403.A35, ITEM #1. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. HOLDEN MOVES TO AMEND SB 374 WITH (EXHIBIT #10), ITEM #1. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. HOLDEN MOVES TO AMEND SB 374 WITH (EXHIBIT #11). THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. WATERMAN MOVES TO AMEND SB 374 WITH (EXHIBIT #10), ITEM #2. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. WATERMAN MOVES TO AMEND SB 374 WITH (EXHIBIT #10), ITEMS #3 & 6. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. WATERMAN MOVES TO AMEND SB 374 WITH (EXHIBIT #10), ITEMS #4 & 5. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. WATERMAN MOVES TO AMEND SB 374 WITH (EXHIBIT #10), ITEMS 7, 8 & 9. THE MOTION CARRIED UNANIMOUSLY.

{Tape: 3; Side: A; Approx. Time Count: 11:20; Comments: None.}

Ms. Purdy Judge Larson suggested language that the supreme court administrator shall coordinate development of federal grant guidelines and coordinate applications for grants by Montana judicial districts. This should probably be put in HB 2. He also requested a policy change to adopt the Wisconsin language

for determining child support. **SEN. KEATING** The Wisconsin language should go to the whole committee.

SEN. JERGESON The Wisconsin model may be wonderful but I hesitate to adopt it in a bill like this without a full blown hearing and understanding of the topic.

SEN. HOLDEN Before we take action on this, is there any issue you want us to handle before it goes to the House? **Ms. Wellbank** We need to make sure that everything that has been done with these amendments conform with the federal requirements. I can't identify any amendments we would take before the House. We do not plan to amend it, but we are concerned with the low fines for the employer new hire reporting.

SEN. HOLDEN Are your concerns valid enough that you want to pursue amendments in the House? **Ms. Wellbank** I can't think of any right now. **SEN. HOLDEN** Assuming this gets out of the Senate, I will assist you with the House hearing. If you plan on coming in with a bunch of amendments in the House and make policy changes, I won't assist you.

SEN. WATERMAN I suggest you consider bringing issues to us when we take executive action on this bill in Finance and Claims.

(EXHIBIT #12 & 13) handed out.

Motion/Vote: **SEN. HOLDEN MOVES SB 374 DO PASS AS AMENDED TO THE WHOLE COMMITTEE. THE MOTION CARRIED WITH SEN. BAER VOTING NO.**

March 12, 1997

Amendments to SB 374

Second Reading Copy

**Drafted by the Department of Public Health and Human Services
Child Support Enforcement Division**

To address the Holden amendment SB 37401.a35

1. Page 17, following line 18.

Insert: “ (b) The employer shall treat an income withholding order issued in another state that appears regular on its face as if it had been issued by a tribunal of this state. An employer may contact the department of public health and human services to determine whether the withholding order was issued by an appropriate authority.”

Guide to Amendments - SB 374

Dated March 11 - Motions Approved by the Subcommittee

- 1) Amendments 1 and 2 stipulate that information in the case registry on the location of obligors and their income and assets must be shared with the courts.
- 2) Amendments 3 and 4 reinsert out-of-state withholding order requirements and allow employers to contact the department to ascertain whether those orders appear valid. The department will offer a change to this language.
- 3) The current bill states that social security numbers must be recorded in certain records. Amendment 5 states that social security numbers have to be recorded in the records if they are known.
- 4) Amendment 6 clarifies that credit reports submitted by the department state whether a withholding order is for delinquent payments.
- 5) Amendment 7 reinstates a time window on when a judgment in a hearing is determined. The department will offer a clarification to the language approved by the subcommittee.
- 6) Amendments 8 and 9 clarify who will issue an order for certain income deductions and that the order will be temporary.
- 7) Amendment 10 makes a de novo in-person hearing upon the request of a party or upon showing that the case was substantially prejudiced.

Dated March 12 - Additional Information Requested of the Department

- 1) Amendment 1 creates a case registry review board and specifies its duties and membership. This language has been reviewed by Judge Larson. His additions, including the appointment of the Missoula County representative, are additions to the language as originally proposed.
- 2) Amendment 2 addresses the opportunity to be exempted from immediate income withholding. This amendment changes the location of the language from the original amendment offered by Senator Holden.
- 3) Amendments 3 and 4 relate to the subcommittee's concern as to whether administrative orders

of the department need to be filed and docketed in district court, and liens and other procedures as they relate to filing with the court.

4) Amendments 5, 6, 7, and 8 reinstate time guidelines on the outcome of certain income withholding hearings. This amendment adds that the time window begins after any post-hearing briefs are received. The department will also offer additional language.

Amendments to Senate Bill No. 374
Second Reading Copy

For the Committee on Finance and Claims

Prepared by Taryn Purdy
March 11, 1997

1. Page 4, line 17.
Following: "assets."
Strike: "Upon request, this"
Insert: "This"
2. Page 4, line 18.
Following: "information"
Strike: "may"
Insert: "must"
Following: "courts"
Insert: "of this state"
Following: the first "and"
Insert: ", upon request, may be shared with"
3. Page 17, line 15.
Following: "~~a~~"
Insert: "(a)"
4. Page 17, following line 18.
Insert: "(b) The employer shall treat an income-withholding order issued in another state that appears regular on its face as if it had been issued by a tribunal of this state. An employer may contact the department of public health and human services to ascertain validity of the order prior to implementing an income-withholding order."
5. Page 25, line 22.
Following: "number"
Insert: ", if known,"
6. Page 45, following line 4.
Insert: "(6) For purposes of credit rating reports by the department, the department shall indicate if the withholding is for delinquent support or for regular monthly support obligations."
7. Page 53, line 22.
Following: "~~the~~"
Strike: "The"
Insert: "Within 60 days after the hearing has been concluded and all the evidence submitted, except for good cause, the"
8. Page 69, lines 9 and 10.
Following: the second "the" on line 9
Strike: "clerk" on line 9 through "of" on line 10
Insert: "district"
9. Page 69, line 10
Following: "issue"
Strike: "an"
Insert: "a temporary"

10. Page 80, line 28.
Following: "party"
Strike: "and"
Insert: "or"

{Legislative Fiscal Division

444-2986}

Non-Mandated Sections of S.B. 374

The following sections of S.B. No. 374 are not mandated by the PERSONAL RESPONSIBILITY AND OPPORTUNITY RECONCILIATION ACT OF 1996. An explanation regarding the purpose of each proposed section is provided for further clarification. We do not believe any of these are controversial except for sections 98 & 99. These non-mandatory changes are important to ensure continued cost effectiveness and efficiency of CSED and to keep up with the current state of case law impacting CSED casework.

Section 46 amends 40-5-225. This is the section under which the CSED establishes support orders. The Omnibus Budget Reconciliation Act of 1993 made changes to the creation and enforcement of medical support, or health insurance orders, and Montana adopted these which are codified at Title 40, Chapter 5, Part 8. However, in order for the CSED to thoroughly and efficiently consider the requirements for a medical support order, it makes more sense for this to be done at the same time the support order was being established, rather than in a separate proceeding with a separate hearing at which both parents must also participate, since the obligation to pay for health insurance can impact a child support obligation.

Section 47 amends 40-5-226 for a number of purposes. First, as in HB 168, now referred to Senate Judiciary, the department is clarifying that CSED hearings are held telephonically. Then, since both parents, as well as the CSED may be parties to an action, the CSED had to clarify when a default occurs. Further federal law requires that obligees or custodial parents be given notice of actions when they are not parties. Any order established by the CSED, just as orders established by the district court, must conform to the case registry and processing requirements. MCA 40-5-226 is also the section which sets out the hearing officer's powers. In order to comply with the federal requirement that various entities provide information to the department upon request and others upon receipt of a subpoena, the CSED hearing officer must have the ability to enforce those requirements. Sanctions for failure to provide the requested information are required by federal law.

Section 48 amends 40-5-227 is not mandated by federal law, but are introduced at the CSED's initiative to reduce costs and provide for more timely and efficient enforcement of orders. When the department's administrative process was developed in the late 70's, administrative establishment and enforcement of paternity and support was uncommon. For that reason, in order to ensure that the department's administrative orders would be recognized by other states, the department filed an abstract or summary of the order with the district court and this section provide that upon filing, the order was effective as a district court order. Since that time, many, many states have moved to administrative processes as allowed and encouraged by federal law, and administrative orders are recognized as valid without this filing with the district court. The federal Full Faith and Credit for Child Support Orders Act also provides that administrative orders are entitled to full faith and credit just as a court order would be. Therefore, it is no longer necessary to create and file abstracts of each administrative order with the district court. This provision will save the department time and will alleviate the clerks of court from this ministerial

duty. This also makes sense because the CSED will become the ultimate record keeper for child support orders, and there is no need to continue to place this docketing burden on district courts for them to abstract the orders back to CSED for inclusion in the central registry.

Section 56 amends the department's process for registration of foreign support orders. These changes are not mandated by federal law but are designed to closely follow the registration of foreign order provisions of the Uniform Interstate Family Support Act at MCA 40-5-188 through 40-5-191, which provide for a hearing to contest the registration of a foreign support order.

Section 72, Not mandated by federal law but clarifies that the department may enforce a foreign support order under these provisions, without need to first register the foreign support order, since all the same defenses to the order may be raised in the income withholding action.

Sections 98 and 99, *amends MCA 87-2-106 and 87-2-202* to provide that a social security number must be provided for an application for licenses under Title 87. Although not mandated, applications already include driver's license numbers, which in most cases is the SSN. Requiring The SSN will facilitate recreational license suspension, and location of an obligor and potential assets. The data base of the Department of Fish, Wildlife and Parks licenses contains over 400,000 names. Matching a name and SSN guarantees accurate identification.

March 12, 1997

SENATE FINANCE AND CLAIMS
ENRIT NO. 5
DATE 3/13/97
BILL NO. SB 374

Amendments to SB 374, Second Reading Copy
Drafted by Department of Public Health and Human Services
Child Support Enforcement Division

To address Senator Holden's concern about an opportunity to be exempted from immediate income withholding.

1. Page 54, following line 8.

Insert: "When issuing a support order, the department shall consider whether any of the exceptions to immediate income withholding found at 40-5-411 apply, and if an exception is applicable, the department shall include the exception in the support order. "

March 12, 1997

SENATE FINANCE AND CLAIMS
ENROLLMENT NO. 6
DATE 3/13/97
BILL NO. SB374

Amendments to SB 374, Second Reading Copy
Drafted by the Department of Public Health and Human Services
Child Support Enforcement Division

To address a concern of subcommittee based on testimony from Judge John W. Larsen

1. Page 57, line 11.
Following: "enforceable"
Strike: "to the same degree as a district court order,"
2. Page 57, following line 12.
Insert: "Contempt of court proceedings and writs of execution based on the administrative order shall not be requested from the district court unless the administrative order is first docketed with the district court. The administrative order shall not operate as a judgment lien, unless the order is first docketed with the district court, or a lien is otherwise perfected under the laws of this state."

Amendments to Senate Bill No. 374
First Reading Copy

For the Committee on Finance and Claims

Prepared by Taryn Purdy
March 12, 1997

1. Page 5, line 14.

Following: "by the unit"

Strike: "and"

Insert: "(b) there is a board to act in an advisory capacity to the case registry and processing unit. The board shall advise the department in the policy direction, control, and management of the case registry and processing unit and in determining forms, data processing needs, terms of contracts and cooperative agreements, and other similar technical requirements. Board members who are not employed by the department shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503. Except for members who represent the department, appointed board members shall serve for a term of 2 years. The board will consist of 5 members as follows:

(i) a district court judge nominated by the district court judges association;

(ii) a clerk of court nominated by the association of clerks of the district courts;

(iii) the supreme court administrator or designee;

(iv) 2 members, appointed by the department director, one from the child support enforcement division and one from the operations and technology division; and

(v) a representative of the data processing division of Missoula County; and"

Renumber: subsequent subsection

2. Page 54, line 8.

Following: "Procedure."

Insert: "When issuing a support order, the department shall consider whether any of the exceptions to immediate income withholding found at 40-5-411 apply, and, if an exception is applicable, the department shall include the exception in the support order."

3. Page 57, line 11.

Following: "enforceable"

Strike: "to the same degree as a district court order,"

4. Page 57, line 11.

Following: "court."

Insert: "Contempt of court proceedings and writs of execution based on the administrative order shall not be requested from the district court unless the administrative order is first docketed with the district court. The administrative order shall not operate as a judgment lien, unless the order is first docketed with the district court, or a lien is otherwise perfected under the laws of this state."

5. Page 81, line 1.

Following: "hearing"

Insert: ":

6. Page 81, line 2.

Following: "~~(a)~~"

Insert: "(a)"

7. Page 81, line 10.

Insert: "(b) unless good cause is found, the department shall, within 60 days of receipt of a request for hearing, conduct a hearing. Unless good cause is found, within 60 days after a hearing is held, any post-hearing briefs are received, and all evidence has been provided to the department concerning a notice of intent to withhold income, the department shall inform the obligor whether income withholding will take place."

8. Page 81, line 29.

Following: "withholding."

Insert: "Whenever the notice of intent to withhold income was issued because an arrearage has accrued or additional income is being withheld to satisfy additional arrearages, unless good cause is found, within 60 days after a hearing is held, any post-hearing briefs are received, and all evidence has been provided, the department shall inform the obligor whether income withholding will take place."

{ Legislative Fiscal Division

444-2986}

March 12, 1997

SENATE NOE AND CLAIMS
BILL NO. 8
DATE 3/13/97
BILL NO. SB 374

Amendments to SB 374, Second Reading Copy
Drafted by the Department of Public Health and Human Services
Child Support Enforcement Division

To address a concern of subcommittee based on testimony from Judge John W. Larsen

1. Page 81, following line 1.
Insert: "(a)"

2. Page 81, following line 8.
Insert: "Unless good cause is found, the department shall, within 60 days of receipt of a request for hearing, conduct a hearing. Unless good cause is found, within 60 days after a hearing is held, any post-hearing briefs are received, and all evidence has been provided to the department concerning a notice of intent to withhold income, the department shall inform the obligor whether income withholding will take place. Failure to issue a decision within 60 days does not preclude issuance of a decision and does not preclude collection of the debt by the department through income withholding or other means."

3. Page 81, following line 29.
Insert: "Whenever the notice of intent to withhold income was issued because an arrearage has accrued or additional income is being withheld to satisfy additional arrearages, unless good cause is found, within 60 days after a hearing is held, any post-hearing briefs are received, and all evidence has been provided, the department shall inform the obligor whether income withholding will take place. Failure to issue a decision within 60 days does not preclude issuance of a decision and does not preclude collection of the debt by the department through income withholding or other means."

4. Page 53, line 22.
Following: "(7)(a)"
Strike: "The"
Insert: "Unless good cause is found, within 60 days after the hearing has been concluded, any post-hearing briefs are received, and all evidence has been presented to the department, the"

5. Page 53, line 26.
Following: "party."
Insert: "Failure to issue a decision within 60 days does not preclude issuance of a decision and does not preclude reissuance of a notice of financial or medical responsibility by the department."

March 12, 1997

Amendments to SB 374, Second Reading Copy
Drafted by the Department of Public Health and Human Services
Child Support Enforcement Division

In response to amendment presented to subcommittee by Judge John W. Larsen

1. Page 5, line 14.
Following: "by the unit"
Strike: "and"

Insert: (b) there is a board to act in an advisory capacity to the case registry and processing unit. The board shall advise the department in the direction, control, and management of the case registry and processing unit and in determining forms, data processing needs, terms of contracts and cooperative agreements, and other similar technical requirements. Board members who are not employed by the department shall serve without pay, but are entitled to reimbursement for travel, meals and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503. Except for member who represent the department, appointed board members shall serve for a term of 2 years. The board will consist of 5 members as follows:

- (i) a district court judge nominated by the district court judges association;
 - (ii) a clerk of court nominated by the association of clerks of the district courts;
 - (iii) the Supreme court Administrator or designee; and
 - (iv) 2 members, appointed by the department's director, one from the child support enforcement division and the other from the operations and technology division; and
- Renumber subsequent subsection.

March 12, 1997

Amendments to SB 374, Second Reading
Proposed by Department of Public Health and Human Services
Child Support Enforcement Division

1. Page 4, lines 1-2.
Following: "awarded"
Strike: "under the same judgment decree or order"
2. Page 61, line 21.
Following: "child,"
Strike: "docketed as provided in 40-5-227"
3. Page 70, line 9.
Following: "8"
Strike: "7"
Insert: "8"
4. Page 71, line 22.
Following: "service of the"
Strike: "order"
Insert: "notice or after service of the income-deduction order on the payor"
5. Page 71, line 23.
Following: "issuance"
Insert: "or continuance"
6. Page 73, line 26.
Following: "10"
Strike: "8"
Insert: "7"
7. Page 13, line 13.
Following: "(1)"
Insert: "(1)"
8. Page 13, line 17.
Following: "(a)"
Strike: "(1)"
Insert: "(a)"
9. Page 13, line 19.

Following: "ET SEQ."

Strike: "AND WITH CONFIDENTIALITY PROVISIONS EQUAL TO OR GREATER
THAN THOSE PROVIDED BY THE DEPARTMENT"

March 12, 1997

Amendments to SB 374

Second Reading Copy

Drafted by the Department of Public Health and Human Services

Child Support Enforcement Division

To address a concern raised by a credit union association

1. Page 14, line 30.
Following: "a computer"
Insert: "or other reasonable"
2. Page 15, line 2.
Following: "a computer"
Insert: "or other reasonable"

March 12, 1997

SENATE FINANCE AND CLAIMS
REPORT NO. 12
DATE 3/13/97
BILL NO. SB 374

Amendments to SB 374, Second Reading Copy
Drafted by the Department of Public Health and Human Services
Child Support Enforcement Division

1. Page 81, following line 8.
Insert: "Failure to issue a decision within 60 days does not preclude issuance of a decision and does not preclude collection of the debt by the department through income withholding or other means."
2. Page 81, following line 29.
Insert: "Failure to issue a decision within 60 days does not preclude issuance of a decision and does not preclude collection of the debt by the department through income withholding or other means."
3. Page 53, line 26.
Following: "party."
Insert: "Failure to issue a decision within 60 days does not preclude issuance of a decision and does not preclude reissuance of a notice of financial or medical responsibility by the department."



DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR
CHILDREN AND FAMILIES

MAR 12 1997

Region VIII
Federal Office Building
1961 Stout Street
Denver, CO 80294-3538

Ms. Mary Ann Wellbank
Program Administrator
Child Support Enforcement Division
Department of Public Health and Human Services
3075 N. Montana Avenue, Suite 112
P.O. Box 202943
Helena, Montana 59620

DATE AND CLAIMS
FILE NO. 13
DATE 3/13/97
BILL NO. 50374

Dear Ms. Wellbank:

On January 7, 1997, I wrote to you to describe the consequences if a State fails to enact laws or otherwise conform to the Child Support Enforcement requirements of Title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193.

You provided a copy of a recent decision of the United States Court of Appeals for the Fourth Circuit (cited below) and asked for our opinion as to whether that decision affected the consequences described in my letter. We requested and received the following legal opinion from our Office of General Counsel:

You have asked us for our interpretation of the decision in Commonwealth of Virginia Department of Education v. Richard W. Riley, U.S. Secretary of Education, ("Riley"), Appeal No. 95-2627 (4th Cir., Feb. 5, 1997); 1997 U.S. App. LEXIS 2796. That per curiam decision has apparently been interpreted by some as supporting the general proposition that the Federal Government cannot cut off Federal funding to a State in the event that the State does not meet all of the conditions for receipt of the Federal funding. In the Riley decision, the appellate court decided that the Federal Government could not withhold the entire Federal special education grant of \$60 million due to the State's refusal to provide educational services to 126 handicapped students who were expelled from school for misconduct unrelated to their handicaps. The Court noted that the State continued to provide education to some 128,000 handicapped students and said that the funding was not conditioned upon the State providing education to all handicapped students.

The Riley decision analyzes and is predicated upon the Individuals with Disabilities Education Act ("IDEA"), and the conditions it sets for Federal financial assistance to State and local education agencies for the education of disabled students. See 20 U.S.C.A. § 1411-20. That statute however, is inapplicable to the Title IV-D Child Support

Enforcement Program, which has its own statute and regulations. See 42 U.S.C.A. § 651 et seq.

In Riley, an en banc panel of the Fourth Circuit Court of Appeals reversed the initial decision issued in Commonwealth of Virginia v. Riley, 86 F.3d 1337, 1347-1358 (4th Cir. 1996), expressly holding that IDEA did not condition the States' receipt of special education funds "upon their continued provision of education to handicapped students expelled for criminal activity or other misconduct unrelated to their disabilities." Under the Child Support Enforcement statute, however, each State must have a plan that meets certain criteria (42 U.S.C.A. § 654), as well as have laws in effect that establish certain procedures (42 U.S.C.A. § 666), before the Secretary will approve the plan for Federal financial assistance.

As affirmed by this legal opinion, the consequences described in my letter of January 7 would not be affected by the Riley decision. For your information, I have enclosed Action Transmittal OCSE-AT-86-21, issued by the Office of Child Support Enforcement, which provides further clarification of the statutory basis for disapproval of State IV-D Plans and termination of Federal funding. Please note the first paragraph which states, "Congress has made no provision for limited or partial suspension of funds, as it did under section 404(a) of the Act for AFDC programs."

Once again, due to the severe consequences that may result, we urge you to take whatever steps are necessary to have the required legislation enacted and implemented.

Sincerely,



Jo B. Shannon
Program Manager
Child Support Enforcement

Enclosure



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of
Child Support EnforcementDirector
Washington, D.C. 20201PROGRAM INSTRUCTIONACTION TRANSMITTALOCSE-AT-86-21

December 31, 1986

TO: STATE AGENCIES ADMINISTERING CHILD SUPPORT ENFORCEMENT PLANS APPROVED UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT AND OTHER INTERESTED INDIVIDUALS

SUBJECT: Procedures for Determining That a State IV-D Plan is Disapproved

BACKGROUND: Section 455(a)(1)(A) of the Social Security Act (the Act) specifies that funds appropriated under title IV-D of the Act shall be paid to States with approved State IV-D plans. There is no authority to expend Federal funds under title IV-D of the Act for the operation of a State Child Support Enforcement Program unless such State has an approved State IV-D plan. Congress has made no provision for limited or partial suspension of funds, as it did under section 404(a) of the Act for AFDC programs.

Section 454 of the Act sets forth the statutory requisites for the State IV-D plan. In addition, regulations at 45 CFR 301.10 define the State IV-D plan as a comprehensive statement submitted by the IV-D agency describing the nature and scope of its program. The State IV-D plan contains all the information necessary for the Office of Child Support Enforcement (OCSE) to determine whether the plan can be approved, as a basis for Federal financial participation in the State IV-D program.

Section 452(a)(3) of the Act requires that the Director of the Office of Child Support Enforcement review and approve State plans for Child Support Enforcement programs under title IV-D of the Act. The authority to approve State plans is delegated to the Regional Office, but the Director retains authority for determining that a State IV-D plan is not approvable.

Section 402(a)(27) of the Act provides that an approved State IV-D plan is a requirement for approval of a State

plan under title IV-A. If a State IV-D plan is disapproved, Federal IV-A funding may be reduced pursuant to section 404(d) of the Act. A reduction under section 404(d) will be imposed in accordance with section 403(h) of the Act.

The Child Support Enforcement Amendments of 1984, P.L. 98-378, created a new section 466 of the Act which requires that all States, as a condition for approval of their State IV-D plan, must have in effect laws requiring the use of certain mandatory procedures to increase the effectiveness of their Child Support Enforcement programs. As a condition for State plan approval, section 454(20) of the Act provides that, to the extent required by section 466, States must have laws in effect and implement the procedures prescribed in or pursuant to such laws. For States which required legislation in order to conform their State IV-D plans to the revised statute, the requirement was delayed until the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after October 1, 1985. By this date, a State must have enacted any required legislation. By the end of the quarter in which this date occurs, the State must submit new or amended State plan material to the OCSE Regional Office. This deadline for submitting State plan material has passed with respect to a number of States, and is imminent for the majority of States.

OCSE has been tracking the progress of each of the States in enacting the new mandatory laws and is noting the date when each State's legislative session ends in order to ascertain when these laws are required to be in effect and when the State must submit new or amended State plan material for approval by OCSE in order to operate a Child Support Enforcement program according to the requirements of title IV-D of the Act. If a State fails to submit the necessary State plan amendments, OCSE will have to determine that the State does not have an approvable State plan.

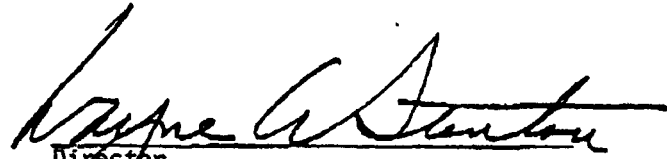
A determination that a State IV-D plan is disapproved will result in immediate suspension of all Federal payments for the State's child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE. If a State is dissatisfied with the Director's decision, reconsideration may be requested pursuant to 45 CFR 301.14. Withholding of Federal payments cannot be stayed pending reconsideration.

Although it is not required under Title IV-D of the Act, OCSE will give States an advance notice of "Intent to Disapprove" a previously approved State IV-D plan. The

State will then be permitted the opportunity to waive reconsideration of the Director's final decision and to exercise, prior to the State plan approval/disapproval decision, the right to a hearing under the procedures set forth at 45 CFR Part 213. If the State elects to pursue its hearing rights prior to issuance of the Director's decision, no further administrative appeal will be allowed.

CONTENT: This action transmittal addresses the process for disapproving a State IV-D plan and the procedures for taking subsequent action to withhold Federal payments under title IV-D of the Act, including provision for notice and an optional hearing to States prior to disapproval.

INQUIRIES TO: OCSE Regional Representatives



Director
Office of Child Support Enforcement

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE

ROLL CALL

SB 374 subcommittee

DATE

3/13/97

NAME	PRESENT	ABSENT	EXCUSED
SEN. CHUCK SWYSGOOD, CHAIRMAN			
SEN. TOM KEATING, VICE CHAIRMAN	✓		
SEN. LARRY BAER	✓		
SEN. TOM BECK			
SEN. JIM BURNETT			
SEN. B.V. "CHRIS" CHRISTIAENS			
SEN. EVE FRANKLIN			
SEN. LOREN JENKINS			
SEN. GREG JERGESON	✓		
SEN. J. D. LYNCH			
SEN. DALE MAHLUM	✓		
SEN. KEN MILLER			
SEN. ARNIE MOHL			
SEN. LINDA NELSON			
SEN. MIKE TAYLOR			
SEN. DARYL TOEWS			
SEN. MIGNON WATERMAN	✓		
<i>Sen. Halligan</i>	✓		
<i>Sen. Holder</i>	✓		

SEN:1997
wp.rollcall.man
CS-09

DATE 3-13-94

SENATE COMMITTEE ON Sub Comm. on SB 374 | Finance +
Claims

BILLS BEING HEARD TODAY: _____

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Rabin Hein	FWP	SB 374		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE & CLAIMS

Call to Order: By CHAIRMAN CHUCK SWYSGOOD, on March 14, 1997, at 8:06 a.m., in Room 108.

ROLL CALL

Members Present:

Sen. Charles "Chuck" Swysgood, Chairman (R)
Sen. Thomas F. Keating, Vice Chairman (R)
Sen. Larry Baer (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. James H. "Jim" Burnett (R)
Sen. B.F. "Chris" Christiaens (D)
Sen. Eve Franklin (D)
Sen. Loren Jenkins (R)
Sen. Greg Jergeson (D)
Sen. John "J.D." Lynch (D)
Sen. Dale Mahlum (R)
Sen. Arnie A. Mohl (R)
Sen. Linda J. Nelson (D)
Sen. Mike Taylor (R)
Sen. Daryl Toews (R)
Sen. Mignon Waterman (D)

Members Excused: Sen. Ken Miller (R)

Members Absent: None

Staff Present: Taryn Purdy, Legislative Fiscal Division
Sharon Cummings, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: None

Executive Action: SB 374, Failed; SB 267, Failed

EXECUTIVE ACTION ON SB 374

Amendments: Amendment #sb037401.a35. (EXHIBIT #1)

Discussion: SEN. TOM KEATING Subcommittee work on SB 374 is in amendment #sb037401.a35. These amendments are at the suggestion of: 1) the two subcommittee members from the Judiciary Committee; 2) Judge Larson, Missoula, and Judge McCarter, Helena;

and 3) the Bankers Association. **SEN. KEATING** explained the amendment.

{Tape: 1; Side: A; Approx. Time Count: 8:20; Comments: None.}

SEN. LARRY BAER The only items the subcommittee changed are what I consider to be overreaching by the Department Public House and Human Services (DPHHS). We did not change anything in the federal law because we were told we couldn't. SB 374, in my opinion, is the most intrusive affront to the rights of state sovereignty I've ever seen in violation of the 10th amendment. Our government is so addicted to federal money that the people of Montana will be forsaken but not with my consent. SB 374 isn't for Montana. When are we going to stop letting the federal government take over everything we do?

SEN. CHRIS CHRISTIAENS Is there a mechanism in this bill to address an errant parent who is out of the country? **Mary Ann Wellbank, DPHHS** Federal law allows the federal government to suspend passports which will become effective October 1, 1997. We also have reciprocal agreements with some countries.

SEN. LOREN JENKINS Are professional licenses in the bill and can they be revoked? **SEN. KEATING** Professional licenses were there before and are still there. DPHHS handles these licenses carefully as they may be necessary for a person's livelihood.

SEN. JENKINS Do we have reciprocal agreements with other states? **Ms. Wellbank** We don't need reciprocal agreements with other states, we have a national interstate system.

SEN. ARNIE MOHL Is amendment #6 the same advisory board as #1? **SEN. KEATING** Yes, #1 is the title of the bill and #6 is the actual language of the bill.

SEN. JENKINS Were the items not required by the federal government taken out? **SEN. KEATING** No, they are amendments to state requirements in sections 46, 47, 48, 56, 72, 98 and 99 of the bill.

SEN. MOHL How much federal funding do we receive? **SEN. KEATING** I believe \$52 million. **SEN. BAER** 66% from the federal government and 32% from Montana.

SEN. MOHL If we don't pass this bill will we lose \$52 million? **SEN. KEATING** Sanctions could be imposed, we received information on a court decision in Virginia that dealt with federal funding. The state rejected federal government requirements, were sanctioned, went to court and won. It appears the federal government cannot sanction. However, we received a letter from the federal government saying that sanction failed because of specific language in the grant, they feel compliance with federal law in child support enforcement is a different topic and we could be subject to the loss of the funds, which is \$52 million.

SEN. MOHL If we adopt this and two years from now the federal government decides not to fund it, would this amount come from the General Fund? **SEN. KEATING** Under the AFDC Medicaid payments for child support, the federal government pays 72% of Medicaid money and the state pays 28% out of General Fund. The sanction would not just be the 66% for child support, it could go as deep as the Medicaid for AFDC.

SEN. MIGNON WATERMAN You need to remember that this bill comes out of the welfare reform package. We are required to do a number of things including to comply with what is in this bill to be involved in the federal welfare child support network. The sanction is in whether we receive the federal welfare funds.

SEN. BAER This is Title IV-D under the federal social security act. If we turn this down we don't get the money that would be provided for Title IV-D only. The court case in Virginia clarifies this. If they specifically tell you in the grant what your responsibilities are and if you don't fulfill those responsibilities they can refuse to give you the money. They cannot penalize you for not accepting their mandate and take away money that has been given to you in other areas that are not specified in the law they mandated to you and you turned down.

SEN. MIKE TAYLOR Did someone study the fiscal note? **SEN. KEATING** Our committee did not get into the fiscal note.

SEN. TAYLOR You are adding a number of FTE's, can't people be shifted instead? **Jack Lowney, DPHHS** Two additional people are being added for the quick turnaround needed for income withholding orders and the W-4 new hiring system.

{Tape: 1; Side: A; Approx. Time Count: 8:35; Comments: None.}

SEN. TAYLOR Is the government providing your software? **Mr. Lowney** We are working with a private contractor to identify our needs. This is funded at the 66%-34% that all Title IV-D is funded. We are hoping to come up with the 34% from our current year funding for state special revenue.

SEN. TAYLOR Would you lay these people off if you find you don't need them any longer? **Mr. Purdy** We probably won't hire until we need people.

SEN. J.D. LYNCH Other than the intrusiveness of this bill, is there anything that isn't morally right? Is there something that goes beyond getting deadbeat dads? **SEN. BAER** I believe all states have a problem collecting child support. Montana's problem might be unique in that other states don't have the characteristics we have. We should be allowed to correct this problem by way of our own legislature, government, ideas, approach and funding without having the federal government force this down our throats. There are things in this bill that are absolute atrocities. Montanan's would never tolerate this in

creating their own approach to the problem. By conforming to this bill we are mandated to go by what they say and the way they want us to do it. I feel Montanan's should take this responsibility upon themselves.

SEN. CHRISTIAENS We talked about a Wisconsin model and the Nelson formula, which model is in this bill? **SEN. KEATING** Judge Larson offered the Wisconsin model as the formula for determining child support. As the chairman of the committee I decided this was too important a policy change for the subcommittee to address.

SEN. CHRISTIAENS What is in this bill regarding a formula or method? **SEN. KEATING** We didn't address the funding formula, the formula DPHHS is following remains the same. **Ms. Wellbank** Currently DPHHS has the authority to adopt guidelines. For the past five years we've used a modified Nelson formula publicized in the administrative rules. The department is currently studying this procedure and requesting public input. We are going in the direction of keeping the modified Nelson formula with revisions to make it simpler. **Ms. Wellbank** handed out a memo (**EXHIBIT #2**) clarifying the department's position on this subject. (**EXHIBIT #3**) also handed out.

SEN. CHRISTIAENS I hope the formula decision would not be retroactive to previous child enforcement determinations. **Ms. Wellbank** We would never retroactively change an existing order. We would use whatever guidelines are in existence as new orders are established or as parents come in for modification of the order. Our direction is to continue with the modified Nelson formula. Montana's formula has been published nationally as one of the most equitable in the nation.

SEN. JENKINS How close are you to being current? **Ms. Wellbank** I don't believe it will ever be possible for any division in the nation to be current. There are people out there who don't use division services, aren't collecting support and are delinquent by the time they come into the division for services. Last year we collected \$44 million and we think about \$170 million is owed either to the State of Montana, custodial parents living in the state or obligated parents living in other states.

SEN. JENKINS Does the judge in a divorce case order payment to the child support division as part of the settlement? **Ms. Wellbank** No, this is not required unless one of the parents is on AFDC. If the custodial parent is having difficulty collecting he/she may apply for our services but there is no requirement to go through our division.

SEN. LYNCH I think my county is being discriminated against. On the amendment you have a representative county data processing unit nominated by the Montana Association of Counties (MACO). Butte-Silver Bow and Anaconda-Deer Lodge don't belong to MACO. This is not a totally representative group if some counties don't

belong. **SEN. GREG JERGESON** I'm responsible for that language, the original amendment presented by Judge Larson was that it be a representative of the Missoula County data processing unit. Naming one county in statute to be on an advisory committee was offensive to me. I realize that all counties do not belong to MACO, but it is available for them to belong.

SEN. LYNCH We should not be in the business of recruiting members for MACO. There must be a better way to do this. **SEN. KEATING** The biggest problem in the subcommittee was determining the county representative.

SEN. WATERMAN The other alternative is having the clerk choose a clerk of court representative and a data processing representative.

CHAIRMAN SWYSGOOD I feel this is one of the most intrusive pieces of legislation I've ever seen in my eleven years of serving on the legislature. I spoke with Sen. Conrad Burns regarding this legislation asking how the federal congress could pass something as intrusive to state rights as this bill. He seemed to be unaware that many of the things in this bill were in the federal welfare reform act that passed. He asked me to send a list of the areas of concern in this legislation so he can take it up in Washington D.C. I intend to identify the parts that we feel intrude upon state, legislature and citizen rights. The decision you make on this bill is up to you understanding what the ramifications could be. Once again I'd like to thank the subcommittee and DPHHS for their work on SB 374.

{Tape: 1; Side: B; Approx. Time Count: 8:50; Comments: None.}

Motion: **SEN. KEATING MOVES TO AMEND SB 374 WITH AMENDMENT #SB037401.A35. (EXHIBIT #1)**

Discussion: **SEN. LYNCH** Are you leaving the MACO nomination in the amendment?

Motion/Vote: **SEN. WATERMAN MAKES A SUBSTITUTE AMENDMENT TO STRIKE SECTION (v) OF ISSUE #6 AND AMEND (ii) TO SAY THAT A CLERK OF COURT AND A REPRESENTATIVE OF A COUNTY DATA PROCESSING UNIT WOULD BE NOMINATED BY THE ASSOCIATION OF CLERKS OF DISTRICT COURT. THE SUBSTITUTE MOTION CARRIED WITH SEN. BURNETT VOTING NO.**

Motion/Vote: **SEN. KEATING MOVES TO AMEND SB 374 WITH AMENDMENT #SB037401.A35 AS AMENDED. THE MOTION CARRIED WITH SEN. BURNETT VOTING NO.**

{Tape: 1; Side: B; Approx. Time Count: 8:57; Comments: None.}

Motion/Vote: **SEN. DALE MAHLUM MOVES SB 374 DO PASS AS AMENDED. THE MOTION FAILS 6-10 ON ROLL CALL VOTE.**

{Tape: 1; Side: B; Approx. Time Count: 9:38; Comments: None.}

EXECUTIVE ACTION ON SB 267

SEN. TOM BECK The overall philosophy was to get the DNRC under the scrutiny of the subcommittees, into the General Fund and keep the statutory appropriations on the grant funds. There are several different amendments. The yellow handout (**EXHIBIT #4**) shows there will be no impact to the General Fund if all the amendments are included.

CHAIRMAN SWYSGOOD We have a white bill which looks like a grey bill #sb0267.01 (**EXHIBIT #5**) All the amendments except one are contained in amendment #sb026701.alm (**EXHIBIT #6**)

Larry Mitchell, LSD SB 267 attempts to reallocate the way RIT funds are handled. **SEN. KEATING'S** approach is to stop the diversion of tax proceeds outside the trust and put everything back into the trust. The concept expanded to this large set of amendments (**EXHIBIT #6**) put together by John Tubbs at DNRC. The amendments have some minor technical problems but are substantively correct. (**EXHIBIT #5**) shows how the bill will look with these amendments in it.

{Tape: 1; Side: B; Approx. Time Count: 9:55; Comments: None.}

John Tubbs, DNRC You also received a grey sheet. (**EXHIBIT #7**) **Mr. Tubbs** explained (**EXHIBIT #7**) and (**EXHIBIT #4**) Further amendments will be offered to shift revenue that is now going into the school trust to expend them on the school trust management activities conducted by the trust lands division of DNRC. This shift will expend trust fund money for those expenditures thus freeing up \$6.4 million of General Fund. This will fund the management of trust lands from the revenue they generate and will offset the \$7.7 million impact on the General Fund.

SEN. LYNCH Where does that money go now? **Mr. Tubbs** It goes to the school trust, is invested and the interest goes to the General Fund and on to schools.

SEN. LYNCH So we are cutting schools out of some funding? **Mr. Tubbs** Lost interest earning due to this diversion would amount to approximately \$313,000 in the first biennium. Making available \$6.4 million in the General Fund.

SEN. TAYLOR Education will still be able to benefit from this because they will have the opportunity to request money from the General Fund, is that correct? **Taryn Purdy, Legislative Fiscal Division (LFD)** Right now the interest from the common school trust goes into the General Fund and is no longer specifically earmarked for schools. This would be a loss to the General Fund in total, approximately \$313,000 in the first biennium which will grow over the years as the cumulative interest is lost. The

Amendments to Senate Bill No. 374
Second Reading CopyEXHIBIT NO. 1DATE 3/14/97For the Committee on Finance and Claims BILL NO. SB374Prepared by Taryn Purdy
March 11, 1997

1. Title, following line 5.
Insert: "CREATING AN ADVISORY BOARD TO ADVISE THE DEPARTMENT;"
2. Title, line 26.
Following: "81-1-102,"
Insert: "AND"
Following: "87-1-108,"
Strike: the remainder of line 26
3. Page 4, lines 1 and 2.
Following: "awarded"
Strike: the remainder of line 1 through "order" on line 2
4. Page 4, line 17.
Following: "assets."
Strike: "Upon request, this"
Insert: "This"
5. Page 4, line 18.
Following: "information"
Strike: "may"
Insert: "must"
Following: "courts"
Insert: "of this state"
Following: the first "and"
Insert: ", upon request, may be shared with"
6. Page 5, line 14.
Following: "by the unit;"
Strike: "and"
Insert: "(b) there is a board to act in an advisory capacity to the case registry and processing unit. The board shall advise the department in the policy, direction, control, and management of the case registry and processing unit and in determining forms, data processing needs, terms of contracts and cooperative agreements, and other similar technical requirements. Board members who are not employed by the department shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503. Except for members who represent the department, appointed board members shall serve for a term of 2 years. The board consists of five members as follows:
 - (i) a district court judge nominated by the district court judges' association;
 - (ii) a clerk of court nominated by the association of clerks of the district courts;
 - (iii) the supreme court administrator or designee;
 - (iv) two members, appointed by the department director, one from the child support enforcement division and one from the operations and technology division; and
 - (v) a representative of a county data processing unit,

nominated by the Montana association of counties; and"
Renumber: subsequent subsection

7. Page 13, lines 19 and 20.

Following: "SEQ."

Strike: the remainder of line 19 through "DEPARTMENT" on line 20

8. Page 14, line 30.

Following: "computer"

Insert: "or other reasonable"

9. Page 15, line 2.

Following: "computer"

Insert: "or other reasonable"

10. Page 17, line 15.

Following: "~~(a)~~"

Insert: "(a)"

11. Page 17, following line 18.

Insert: "(b) The employer shall treat an income-withholding order issued in another state that appears regular on its face as if it had been issued by a tribunal of this state. An employer may contact the department of public health and human services to determine whether the withholding order was issued by the appropriate authority."

12. Page 25, line 22.

Following: "number"

Insert: ", if known,"

13. Page 45, following line 4.

Insert: "(6) For purposes of credit rating reports by the department, the department shall indicate if the withholding is for delinquent support or for regular monthly support obligations."

14. Page 52, line 10.

Following: "party"

Strike: "and"

Insert: "or"

15. Page 53, line 22.

Following: "~~the~~"

Strike: "The"

Insert: "Within 60 days after the hearing has been concluded, any post-hearing briefs are received, and all the evidence submitted, except for good cause, the"

16. Page 54, line 8.

Following: "Procedure."

Insert: "When issuing a support order, the department shall consider whether any of the exceptions to immediate income withholding found at 40-5-411 apply, and, if an exception is applicable, the department shall include the exception in the support order."

17. Page 57, lines 11 and 12.

Following: "enforceable"

Strike: "to the same degree as a district court order,"

18. Page 57, line 12.

Following: "court."

Insert: "Contempt of court proceedings and writs of execution based on the administrative order may not be requested from the district court unless the administrative order is first docketed with the district court. The administrative order may not operate as a judgment lien, unless the order is first docketed with the district court or a lien is otherwise perfected under the laws of this state, including 40-5-248."

19. Page 61, line 21.

Following: "child"

Strike: the remainder of line 21

20. Page 69, lines 9 and 10.

Following: the second "the" on line 9

Strike: "clerk" on line 9 through "of" on line 10

Insert: "district"

21. Page 69, line 10

Following: "issue"

Strike: "an"

Insert: "a temporary"

22. Page 70, line 9.

Following: "8"

Strike: "7"

Insert: "8"

23. Page 71, line 22.

Following: "the"

Strike: "order"

Insert: "notice or after service of the income-deduction order on the payor"

24. Page 71, line 23.

Following: "issuance"

Insert: "or continuance"

25. Page 73, line 26.

Following: "~~10~~"

Strike: "8"

Insert: "7"

26. Page 80, line 28.

Following: "party"

Strike: "and"

Insert: "or"

27. Page 81, line 1.

Following: "hearing"

Insert: ":",

28. Page 81, line 2.

Following: "~~(a)~~"

Insert: "(a)"

29. Page 81, following line 10.

Insert: "(b) unless good cause is found, the department shall, within 60 days of receipt of a request for a hearing, conduct a hearing. Unless good cause is found, within 60 days after a hearing is

held, any post-hearing briefs are received, and all evidence has been provided to the department concerning a notice of intent to withhold income, the department shall inform the obligor whether income withholding must take place."

30. Page 81, line 29.

Following: "withholding."

Insert: "Whenever the notice of intent to withhold income is issued because an arrearage has accrued or additional income is being withheld to satisfy additional arrearages, unless good cause is found, within 60 days after a hearing is held, any post-hearing briefs are received, and all evidence has been provided, the department shall inform the obligor whether income withholding must take place."

31. Page 107, line 25 through page 109, line 21.

Strike: sections 99 and 100 in their entirety

Renumber: subsequent sections

{ Legislative Fiscal Division

444-2986}

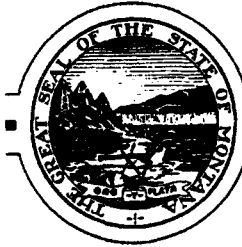
DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

SENATE FINANCE AND CLAIMS

EXHIBIT NO. 2

DATE 3/14/97

BILL NO. SB 374



MARC RACICOT
GOVERNOR

LAURIE EKANGER
DIRECTOR

STATE OF MONTANA

FAX (406) 444-1370
(406) 442-7278

3075 N MONTANA, SUITE 112
PO BOX 202943
HELENA, MONTANA 59620-2943

March 13, 1997

TO: Senator Swysgood, Chair
and Members of Senate Finance and Claims Committee

FROM: Mary Ann Wellbank, Administrator
Child Support Enforcement Division

RE: SB 374
Conceptual Amendment proposed by Judge John W. Larson to
Adopt Wisconsin Child Support Guidelines

During the SB 374 SFC Subcommittee meeting of March 11, 1996, Judge John Larson (Fourth Judicial District - Missoula) proposed a conceptual amendment to SB 374 which would require the state adopt child support guidelines based on the Wisconsin model. At that time I cautioned the Sub-Committee that adopting Judge Larson's proposal would be a major departure from the current guidelines policy, and the opportunity for legislative study and public testimony would be extremely limited if SB 374 was amended in accordance with this recommendation.

Montana law, 40-5-209, MCA authorizes the department to establish guidelines by administrative regulation and requires notification. The guidelines are a formula used to determine the appropriate amount of current support for the child. Federal regulation, 45 CFR 302.56 requires states to review and if necessary revise, these guidelines every four years. The department is in process of reviewing and revising the guidelines. We contracted with the University of Montana and the Center for Support of Families to study the existing guidelines, review alternative models such as Wisconsin's, interview members of the judiciary, bar, legislature and constituents, and make recommendations for revision. The department also directly solicited public comment through press releases, letters to all legislators and all members of the Montana Bar Association. While we have not yet commenced the administrative rulemaking process, we have completed the study which determined that while Montana guidelines are complex, they are also equitable. Based on the study and the input we received, our goal is to simplify the guidelines but maintain the equitableness. We have 800 constituents on our list who have expressed interest in the guidelines regulations and want to keep apprised of

the process.

In South Dakota, the Guidelines are reflected in statute. The Governor appointed a two-year study commission to hold public hearings and make recommendations to the Legislature. The Legislature adopted the recommendations.

Judge Larson recommended the Wisconsin guideline model because of its administrative simplicity. Indeed, the Wisconsin model simplifies calculation of a support order. For one child, and obligated parent pays 17% of his income, for two children 25%, for three children 31%, and 35% for five or more children.

Certainly the Wisconsin model would assist both courts and the division in establishing child support orders, and thus disposing of cases, more expeditiously. However, despite the apparent complexity of the existing guidelines, the judicial and legal community interviewed for the study recommended revision and simplification of the existing guidelines, *not* adoption of alternative models. In fact, only two respondents suggested the Montana guidelines should be based on the Wisconsin model.

The drawback, however, is that the Wisconsin model is too simplistic and is based solely on a percentage of the obligated parent's income. The custodial parent's income is not a factor, even though the custodial parent may be in a better financial position. A comparison of the Montana v. Wisconsin models conducted for the study indicated that Montana obligated parents would pay more under the Wisconsin guidelines. Additionally, the Wisconsin model does not take into consideration all the factors the Montana guidelines employ that make our guidelines more equitable to both parents. Montana's guidelines are based on the Melson formula, which is considered the most equitable. In fact, in an article recently written by the assistant staff director of the ABA Center of Children and the Law, Marianne Takes, entitled "Improving Child Support Guidelines: Can Simple Formulae Address Complex Families?" comprehensively evaluates the pros and cons of the three major guidelines models in the U.S.: income shares, percentage of income and Melson model with respect to multiple families, subsequent children of non-custodial and custodial parents, shared and split custody, child care costs, avoidance of poverty, and standards of living. The author concluded the Melson formula results in a "more realistic determination of actual ability to pay child support and the avoidance of unnecessary or comparative poverty."

The department is neither an opponent or a proponent to the conceptual amendment proposed by Judge Larson, although the department may have a position once the language is drafted. Our position on this amendment is merely advisory: A state guidelines policy is a MAJOR endeavor that is worthy of substantial public input, discussion, and mathematical evaluation. A change to the Wisconsin model may satisfy a judge's or state agency's desire to simplify the calculation, but would not necessarily be satisfactory to the parents who pay and receive support on behalf of their children, or taxpayers who desire to keep children - of both obligors and obligees- out of poverty and off public welfare programs.

If the Legislature is uncomfortable with the process already undertaken by the department which

will result in revised rules, the Legislature may consider designating an interim committee to study the guidelines and make recommendations for inclusion of the guidelines in statute. At least this would continue the open, public process the department has commenced with ample opportunity for the Legislature to evaluate alternatives prior to implementing such a drastic change in state policy, which would impact thousands of divorced and separated parents and their children.

Attached is a brief and general overview of the Montana model v. the Wisconsin model.

c: Senator Don Hargrove, Sponsor
 Laurie Ekanger, DPHHS Director

Comparison Montana (Modified Melson) Model v. Wisconsin (Percentage of Income) Model

MELSON (MONTANA) Montana's Child Support Guidelines are based on a modified Melson Formula. The Melson Formula was named after Judge Elwood F. Melson of the Delaware Family Court. The Melson Formula explicitly recognizes that support of children is impossible until the parent's own basic support needs are met. The Melson Formula Model reflects the public policy that further enhancement of the parents' own economic status should not be allowed until the parents jointly, in proportion to their incomes, meet the basic poverty level needs of their children. The Melson Formula incorporates a Standard of Living Adjustment (SOLA) that reflects the policy judgment that parents should share their additional income with their children, improving their children's standard of living as their own standard of living improves.

The Melson Formula Model is basically a six-step process:

1. Provide for each parent's minimal self-support needs.
2. Provide for the children's primary support needs.
3. Determine work-related child care expenses and extraordinary medical expenses.
4. Determine the Standard of Living Adjustment
5. Add together the amounts determined in steps 2, 3 and 4.
6. Allocate the support between the parents according to each parent's percentage of total net income.

The proponents of the Melson Formula Model argue its internal logic makes it the fairest of the models. The Melson Formula Model takes into consideration not only special custody arrangements and health care needs, it also takes into consideration each parent's needs. It is thus, the fairest as perceived by the parent. Where perceived fairness is the most important factor, then the Melson Formula Model is the clear winner. Because the Melson Formula Model takes into consideration commonly occurring expenses, it is consistent and predictable. Its only fault is in its facial complexity.

PERCENTAGE OF INCOME (WISCONSIN) Wisconsin's child support guidelines are based on the Percentage of Income Model. It is based on a percentage of only the obligor's income. Under the Flat Percentage Model the percentage of income devoted to child support remains constant at all income levels, so as the income increases, the child support amount also increases.

The calculation of child support under the Percentage of Income approach is a three-step process:

1. The obligor's income is determined.
2. A percentage is applied to that income to determine the basic child support order.
3. Adjustments are made for add-ons and deductions to reach a final order.

Opponents of the Percentage of Income Model argue that states that have adopted the Percentage of Income Model generally do not take into consideration adjustments for child care, extraordinary medical expenses, shared or split custody, serial family development, or most significantly, extremely high or low custodial parent income. Thus, while the Percentage of Income Model has the advantage of ease of administration, where such commonly occurring factors need to be dealt with as deviations rather than part of the formula, the goal of consistency and predictability is lost. Further, where deviation becomes the norm, the goal of perceived fairness is lost as well.



DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR
CHILDREN AND FAMILIES

MAR 12 1997

Region VIII
Federal Office Building
1961 Stout Street
Denver, CO 80294-3538

Ms. Mary Ann Wellbank
Program Administrator
Child Support Enforcement Division
Department of Public Health and Human Services
3075 N. Montana Avenue, Suite 112
P.O. Box 202943
Helena, Montana 59620

SENATE FINANCE AND CLAIMS

EXHIBIT NO. 3DATE 3/14/97BILL NO. SB374

Dear Ms. Wellbank:

On January 7, 1997, I wrote to you to describe the consequences if a State fails to enact laws or otherwise conform to the Child Support Enforcement requirements of Title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193.

You provided a copy of a recent decision of the United States Court of Appeals for the Fourth Circuit (cited below) and asked for our opinion as to whether that decision affected the consequences described in my letter. We requested and received the following legal opinion from our Office of General Counsel:

You have asked us for our interpretation of the decision in Commonwealth of Virginia Department of Education v. Richard W. Riley, U.S. Secretary of Education, ("Riley"), Appeal No. 95-2627 (4th Cir., Feb. 5, 1997); 1997 U.S. App. LEXIS 2796. That per curiam decision has apparently been interpreted by some as supporting the general proposition that the Federal Government cannot cut off Federal funding to a State in the event that the State does not meet all of the conditions for receipt of the Federal funding. In the Riley decision, the appellate court decided that the Federal Government could not withhold the entire Federal special education grant of \$60 million due to the State's refusal to provide educational services to 126 handicapped students who were expelled from school for misconduct unrelated to their handicaps. The Court noted that the State continued to provide education to some 128,000 handicapped students and said that the funding was not conditioned upon the State providing education to all handicapped students.

The Riley decision analyzes and is predicated upon the Individuals with Disabilities Education Act ("IDEA"), and the conditions it sets for Federal financial assistance to State and local education agencies for the education of disabled students. See 20 U.S.C.A. § 1411-20. That statute however, is inapplicable to the Title IV-D Child Support

Enforcement Program, which has its own statute and regulations. See 42 U.S.C.A. § 651 et seq.

In Riley, an en banc panel of the Fourth Circuit Court of Appeals reversed the initial decision issued in Commonwealth of Virginia v. Riley, 86 F.3d 1337, 1347-1358 (4th Cir. 1996), expressly holding that IDEA did not condition the States' receipt of special education funds "upon their continued provision of education to handicapped students expelled for criminal activity or other misconduct unrelated to their disabilities." Under the Child Support Enforcement statute, however, each State must have a plan that meets certain criteria (42 U.S.C.A. § 654), as well as have laws in effect that establish certain procedures (42 U.S.C.A. § 666), before the Secretary will approve the plan for Federal financial assistance.

As affirmed by this legal opinion, the consequences described in my letter of January 7 would not be affected by the Riley decision. For your information, I have enclosed Action Transmittal OCSE-AT-86-21, issued by the Office of Child Support Enforcement, which provides further clarification of the statutory basis for disapproval of State IV-D Plans and termination of Federal funding. Please note the first paragraph which states, "Congress has made no provision for limited or partial suspension of funds, as it did under section 404(a) of the Act for AFDC programs."

Once again, due to the severe consequences that may result, we urge you to take whatever steps are necessary to have the required legislation enacted and implemented.

Sincerely,



Jo B. Shannon
Program Manager
Child Support Enforcement

Enclosure



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of
Child Support EnforcementDirector
Washington, D.C. 20201PROGRAM INSTRUCTIONACTION TRANSMITTAL

OCSE-AT-86-21

December 31, 1986

TO: STATE AGENCIES ADMINISTERING CHILD SUPPORT ENFORCEMENT PLANS APPROVED UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT AND OTHER INTERESTED INDIVIDUALS

SUBJECT: Procedures for Determining That a State IV-D Plan is Disapproved

BACKGROUND: Section 455(a)(1)(A) of the Social Security Act (the Act) specifies that funds appropriated under title IV-D of the Act shall be paid to States with approved State IV-D plans. There is no authority to expend Federal funds under title IV-D of the Act for the operation of a State Child Support Enforcement Program unless such State has an approved State IV-D plan. Congress has made no provision for limited or partial suspension of funds, as it did under section 404(a) of the Act for AFDC programs.

Section 454 of the Act sets forth the statutory requisites for the State IV-D plan. In addition, regulations at 45 CFR 301.10 define the State IV-D plan as a comprehensive statement submitted by the IV-D agency describing the nature and scope of its program. The State IV-D plan contains all the information necessary for the Office of Child Support Enforcement (OCSE) to determine whether the plan can be approved, as a basis for Federal financial participation in the State IV-D program.

Section 452(a)(3) of the Act requires that the Director of the Office of Child Support Enforcement review and approve State plans for Child Support Enforcement programs under title IV-D of the Act. The authority to approve State plans is delegated to the Regional Office, but the Director retains authority for determining that a State IV-D plan is not approvable.

Section 402(a)(27) of the Act provides that an approved State IV-D plan is a requirement for approval of a State

plan under title IV-A. If a State IV-D plan is disapproved, Federal IV-A funding may be reduced pursuant to section 404(d) of the Act. A reduction under section 404(d) will be imposed in accordance with section 403(h) of the Act.

The Child Support Enforcement Amendments of 1984, P.L. 98-378, created a new section 466 of the Act which requires that all States, as a condition for approval of their State IV-D plan, must have in effect laws requiring the use of certain mandatory procedures to increase the effectiveness of their Child Support Enforcement programs. As a condition for State plan approval, section 454(20) of the Act provides that, to the extent required by section 466, States must have laws in effect and implement the procedures prescribed in or pursuant to such laws. For States which required legislation in order to conform their State IV-D plans to the revised statute, the requirement was delayed until the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after October 1, 1985. By this date, a State must have enacted any required legislation. By the end of the quarter in which this date occurs, the State must submit new or amended State plan material to the OCSE Regional Office. This deadline for submitting State plan material has passed with respect to a number of States, and is imminent for the majority of States.

OCSE has been tracking the progress of each of the States in enacting the new mandatory laws and is noting the date when each State's legislative session ends in order to ascertain when these laws are required to be in effect and when the State must submit new or amended State plan material for approval by OCSE in order to operate a Child Support Enforcement program according to the requirements of title IV-D of the Act. If a State fails to submit the necessary State plan amendments, OCSE will have to determine that the State does not have an approvable State plan.

A determination that a State IV-D plan is disapproved will result in immediate suspension of all Federal payments for the State's child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE. If a State is dissatisfied with the Director's decision, reconsideration may be requested pursuant to 45 CFR 301.14. Withholding of Federal payments cannot be stayed pending reconsideration.

Although it is not required under Title IV-D of the Act, OCSE will give States an advance notice of "Intent to Disapprove" a previously approved State IV-D plan. The

State will then be permitted the opportunity to waive reconsideration of the Director's final decision and to exercise, prior to the State plan approval/disapproval decision, the right to a hearing under the procedures set forth at 45 CFR Part 213. If the State elects to pursue its hearing rights prior to issuance of the Director's decision, no further administrative appeal will be allowed.

CONTENT:

This action transmittal addresses the process for disapproving a State IV-D plan and the procedures for taking subsequent action to withhold Federal payments under title IV-D of the Act, including provision for notice and an optional hearing to States prior to disapproval.

INQUIRIES TO: OCSE Regional Representatives



Wayne A. Stanton
Director
Office of Child Support Enforcement



DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR
CHILDREN AND FAMILIESRegion VIII
Federal Office Building
1961 Stout Street
Denver, CO 80294-3538

JAN 07 1997

Ms. Mary Ann Wellbank
Program Administrator
Child Support Enforcement Division
Department of Public Health and Human Services
3075 N. Montana Avenue, Suite 112
P.O. Box 202943
Helena, Montana 59620

Dear Ms. Wellbank:

This is in response to your request for clarification of the consequences if a State fails to enact laws or otherwise conform to the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

In order for a State to receive Federal funding for the operation of its child support enforcement program, it must have an approved State IV-D plan which meets the requirements of section 454 of the Social Security Act (the Act). One of those requirements, specified at section 454(20)(A), is that the State must have in effect all of the laws required by section 466.

PRWORA made numerous changes to sections 454 and 466 of the Act. Although the effective dates of the PRWORA provisions vary, many of the new requirements will require State legislation to be enacted during the 1997 legislative session.

When a State fails to comply with all statutory requisites, its plan is subject to disapproval by the Office of Child Support Enforcement (OCSE). In accordance with sections 452(a)(3) and 455(a)(1)(A) of the Act, there would then be no authority to expend Federal funds under Title IV-D of the Act for the operation of the State's child support enforcement program.

Therefore, a determination that a State IV-D plan is disapproved will result in immediate suspension of all Federal payments for the State's child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE. In addition, in order to be eligible for a block grant for Temporary Assistance to Needy Families (TANF), section 402(a)(2) of the Act requires a State to certify that it will operate a child support enforcement program under the State plan approved under part D. Therefore, TANF funding would also be jeopardized if the State failed to enact the required child support legislation on a timely basis.

Due to the gravity of the consequences that may result, we urge you to take whatever steps are necessary to have the required legislation enacted and implemented.

Sincerely,

Jo B. Shannon

Jo B. Shannon
Program Manager
Child Support Enforcement

**MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE**

ROLL CALL

DATE

8/14/97

NAME	PRESENT	ABSENT	EXCUSED
SEN. CHUCK SWYSGOOD, CHAIRMAN	✓		
SEN. TOM KEATING, VICE CHAIRMAN	✓		
SEN. LARRY BAER	✓		
SEN. TOM BECK	✓		
SEN. JIM BURNETT	✓		
SEN. B.V. "CHRIS" CHRISTIAENS	✓		
SEN. EVE FRANKLIN	✓		
SEN. LOREN JENKINS	✓		
SEN. GREG JERGESON	✓		
SEN. J. D. LYNCH	✓		
SEN. DALE MAHLUM	✓		
SEN. KEN MILLER			✓
SEN. ARNIE MOHL	✓		
SEN. LINDA NELSON	✓		
SEN. MIKE TAYLOR	✓		
SEN. DARYL TOEWS	✓		
SEN. MIGNON WATERMAN	✓		

SEN:1997
wp.rollcall.man
CS-09

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE
ROLL CALL VOTE

DATE 3/14/97 BILL NO. SB 374 NUMBER _____

MOTION: do pass as amended

NAME	AYE	NO
SEN. CHUCK SWYSGOOD, CHAIRMAN		✓
SEN. TOM KEATING, VICE CHAIRMAN		✓
SEN. LARRY BAER		✓
SEN. TOM BECK	✓	
SEN. JIM BURNETT		✓
SEN. B.F "CHRIS" CHRISTIAENS	✓	
SEN. EVE FRANKLIN		✓
SEN. LOREN JENKINS		✓
SEN. GREG JERGESON	✓	
SEN. J. D. LYNCH	✓	
SEN. DALE MAHLUM		✓
SEN. KEN MILLER		
SEN. ARNIE MOHL		✓
SEN. LINDA NELSON	✓	
SEN. MIKE TAYLOR		✓
SEN. DARYL TOEWS		✓
SEN. MIGNON WATERMAN	✓	

SEN:1997
wp:rlclvote.man
CS-11

6 10

I Vote for SB374

Amendment 9
Bill

Pam Bush

DATE 3/14/97
 SENATE COMMITTEE ON Finance & Claims
^{in action}
 BILLS BEING HEARD TODAY: SB 267, HB 171, SB 374

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Alan Rollo				
Lois McMeekin	MAC-CAN			
Dale McMeekin	Mac Can			
JoAnn Hanson	MAC-CAN			

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE & CLAIMS

Call to Order: By **CHAIRMAN CHUCK SWYSGOOD**, on March 20, 1997, at 8:05 a.m., in Room 108.

ROLL CALL

Members Present:

Sen. Charles "Chuck" Swysgood, Chairman (R)
Sen. Thomas F. Keating, Vice Chairman (R)
Sen. Larry Baer (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. James H. "Jim" Burnett (R)
Sen. B.F. "Chris" Christiaens (D)
Sen. Eve Franklin (D)
Sen. Loren Jenkins (R)
Sen. Greg Jergeson (D)
Sen. John "J.D." Lynch (D)
Sen. Dale Mahlum (R)
Sen. Ken Miller (R)
Sen. Arnie A. Mohl (R)
Sen. Linda J. Nelson (D)
Sen. Mike Taylor (R)
Sen. Daryl Toews (R)
Sen. Mignon Waterman (D)

Members Excused: None

Members Absent: None

Staff Present: Taryn Purdy, Legislative Fiscal Division
Sharon Cummings, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 114, 3/14/97; HB 136,
3/14/97
Executive Action: HB 125, BCCAA; HB 102, BCCAA;
HB 405, Tabled; SB 374, Failed

HEARING ON HB 114

Sponsor: REP. LINDA MCCULLOCH, HD 70, MISSOULA

Proponents: Mary Alice Cook, Children and Family Lobby

Vote: THE MOTION TO RECONSIDER SB 267 FAILED ON 8-9 ON ROLL CALL VOTE.

{Tape: 2; Side: A; Approx. Time Count: 10:30; Comments: None.}

CHAIRMAN SWYSGOOD We have 2 Senate bills that have to meet the 67th day transmittal deadline and have to be out of this committee tomorrow. You understand the ramifications of SB 374 and the concern that \$48-52 million federal funds will be hung up.

RECONSIDER SB 374

Motion/Vote: SEN. BECK MOVES TO RECONSIDER ACTION ON SB 374. THE MOTION CARRIED 9-8 ON ROLL CALL VOTE.

EXECUTIVE ACTION ON SB 374

Motion: SEN. BECK MOVES SB 374 DO PASS AS AMENDED.

Discussion: SEN. BECK I hope the Department of Public Health and Human Services is here and someone can tell me where we will make the shortfall of approximately \$52 million. I'm not overly enhanced by this bill and what it will require but I don't know what we will do with the kids out there.

CHAIRMAN SWYSGOOD As I stated in subcommittee, this is the most intrusive piece of legislation that I have ever seen on the rights of individuals, employers and everyone else concerned. When do we say to the feds that we are not going to tolerate this? I don't believe they will withhold all the funds associated with this and am willing to risk that in my stance against this bill.

SEN. LYNCH **SEN. WATERMAN**, are you comfortable that they won't withhold the money? **SEN. WATERMAN** I think they will withhold the money. This is TANF, welfare reform, dollars you are talking about here, not child support dollars. We have to implement these rules to access federal welfare money. If we were a California, Texas or New York spitting in the face of the giant, it might have more effect. We are just a blip on the radar screen.

SEN. BAER Watch that you don't get sucked in on this because the money they claim they'll take away from us, as far as I can see, is money that would come if you pass the bill. They can't take away money from any other program that isn't directly conditioned in the contractual language of this bill. This is a misconception. The case we talked about ruled in the 4th circuit that they cannot take away money they have already granted for other programs. The money you would lose by not voting for the bill is only additional money that would come because of the bill.

SEN. CHRISTIAENS We're talking about millions of dollars in welfare reform with TANF. Yesterday, on the floor of the Senate, we bent to the federal will for \$1 million in highway construction funds and mandated that kids will lose their drivers license for 1 beer because we wanted those dollars. If we are really interested in kids in this state, this bill has a lot more impact, that is why I voted yes.

SEN. MILLER The reason we voted for that bill is not necessarily because of the federal money, it might be because we do or don't like the bill.

SEN. DARYL TOEWS We need to remember Goals 2000, we turned that money back and they redid that bill and most of that money came back to the state.

SEN. LYNCH I hate the bill but my problem is that we are not taking away from ourselves, we are taking away from the very neediest of the needy. I can't, in good conscience, say I stood up to the feds, by the way you don't eat as much, but I stood up to them.

SEN. JENKINS We shouldn't lose sight of the fact that this is money that could possibly come in if we pass the bill, it isn't what has been promised to us right now and they'll take it away. When they balance their budget in Washington, you know who will take the bite on that budget. There is no saying that much will get to the state if we pass it, we might not receive a penny of it.

SEN. WATERMAN I think there is a misunderstanding here. We have moved from getting funds as a right under welfare as it existed before to a federal block grant. They give us X number of dollars, this is a new program. We used to get an entitlement for welfare, it was replaced by congress by a block grant that will continue for the next 5 years. It is that block grant that we are talking about here. One of the conditions of getting the block grant is to do this. This isn't additional money, this is the money that replaces what most of us knew as welfare.

CHAIRMAN SWYSGOOD The child support enforcement division comes under Title IV-D money, if they withhold any money from the TANF block grant, that would be the only money they could withhold because that comes with this legislation. I do not believe they can withhold the other funds, I may be wrong.

SEN. GREG JERGESON I believe there is another area of money that we should consider in our deliberations. If an obligated parent moves to another state leaving the custodial parent in Montana and our law is not synonymous with theirs, we may have a problem collecting from the obligated parent. I believe we would have an added welfare cost with this.

SEN. MAHLUM My concern is the final end result, how will this impact the children?

SEN. BAER The sovereignty of the State of Montana is for sale here. We talked with Sen. Burns, he was not aware of much of the intrusive inclusions in this bill. He has told us he is willing to address these intrusions. Rather than sell out the state for umpteen million dollars, Sen. Burns is willing to revisit this and, I'm sure congress will be willing to revisit it too. We will not have sold our souls for a few pieces of silver.

SEN. BECK My concern is that we don't shoot ourselves in the foot. We have a moral obligation to the children of this state. This bill should go to the Senate floor for debate and maybe some of the questions will be answered. I think this bill deserves consideration by the full Senate.

{Tape: 2; Side: B; Approx. Time Count: 10:45; Comments: None.}

Vote: THE MOTION THAT SB 374 DO PASS AS AMENDED FAILED 7-10 ON ROLL CALL VOTE.

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE

ROLL CALL

DATE

3/20/97

NAME	PRESENT	ABSENT	EXCUSED
SEN. CHUCK SWYSGOOD, CHAIRMAN	✓		
SEN. TOM KEATING, VICE CHAIRMAN	✓		
SEN. LARRY BAER	✓		
SEN. TOM BECK	✓		
SEN. JIM BURNETT	✓		
SEN. B.V. "CHRIS" CHRISTIAENS	✓		
SEN. EVE FRANKLIN	✓		
SEN. LOREN JENKINS	✓		
SEN. GREG JERGESON	✓		
SEN. J. D. LYNCH	✓		
SEN. DALE MAHLUM	✓		
SEN. KEN MILLER	✓		
SEN. ARNIE MOHL	✓		
SEN. LINDA NELSON	✓		
SEN. MIKE TAYLOR	✓		
SEN. DARYL TOEWS	✓		
SEN. MIGNON WATERMAN	✓		

SEN:1997
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MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE
ROLL CALL VOTE

DATE 3/20/97 BILL NO. SB 374 NUMBER _____

MOTION: reconsider

NAME	AYE	NO
SEN. CHUCK SWYSGOOD, CHAIRMAN		✓
SEN. TOM KEATING, VICE CHAIRMAN	✓	
SEN. LARRY BAER		✓
SEN. TOM BECK	✓	
SEN. JIM BURNETT	✓	
SEN. B.F "CHRIS" CHRISTIAENS	✓	
SEN. EVE FRANKLIN		✓
SEN. LOREN JENKINS		✓
SEN. GREG JERGESON	✓	
SEN. J. D. LYNCH	✓	
SEN. DALE MAHLUM	✓	
SEN. KEN MILLER		✓
SEN. ARNIE MOHL		✓
SEN. LINDA NELSON	✓	
SEN. MIKE TAYLOR	✓	
SEN. DARYL TOEWS		✓
SEN. MIGNON WATERMAN		✓
	9	8

SEN:1997
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MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE
ROLL CALL VOTE

DATE 3/20/97 BILL NO. SB 374 NUMBER _____
MOTION: DPAA

NAME	AYE	NO
SEN. CHUCK SWYSGOOD, CHAIRMAN		✓
SEN. TOM KEATING, VICE CHAIRMAN		✓
SEN. LARRY BAER		✓
SEN. TOM BECK	✓	
SEN. JIM BURNETT		✓
SEN. B.F "CHRIS" CHRISTIAENS	✓	
SEN. EVE FRANKLIN	✓	
SEN. LOREN JENKINS		✓
SEN. GREG JERGESON	✓	
SEN. J. D. LYNCH	✓	
SEN. DALE MAHLUM		✓
SEN. KEN MILLER		✓
SEN. ARNIE MOHL		✓
SEN. LINDA NELSON	✓	
SEN. MIKE TAYLOR		✓
SEN. DARYL TOEWS	✓	✓
SEN. MIGNON WATERMAN		
	7	10

SEN:1997
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MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE & CLAIMS

Call to Order: By **CHAIRMAN CHUCK SWYSGOOD**, on March 21, 1997, at 7:06 a.m., in Room 108.

ROLL CALL

Members Present:

Sen. Charles "Chuck" Swysgood, Chairman (R)
Sen. Thomas F. Keating, Vice Chairman (R)
Sen. Larry Baer (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. James H. "Jim" Burnett (R)
Sen. B.F. "Chris" Christiaens (D)
Sen. Eve Franklin (D)
Sen. Loren Jenkins (R)
Sen. Greg Jergeson (D)
Sen. John "J.D." Lynch (D)
Sen. Dale Mahlum (R)
Sen. Ken Miller (R)
Sen. Arnie A. Mohl (R)
Sen. Linda J. Nelson (D)
Sen. Mike Taylor (R)
Sen. Daryl Toews (R)
Sen. Mignon Waterman (D)

Members Excused: None

Members Absent: None

Staff Present: Taryn Purdy, Legislative Fiscal Division
Sharon Cummings, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 544, 3/18/97;
HB 83, 3/18/97

Executive Action: HB 544, BCC; HB 83, BCCAA; SB
267, Tabled; SB 374, DPAA; HB
114, BCC; HB 136, BCCAA, HB
559, BCCAA

Motion/Vote: SEN. JERGSON MOVES TO AMEND HB 83 BY STRIKING "PROVIDE" AND INSERT "GUARANTEE". THE MOTION FAILED 7-9 ON ROLL CALL VOTE.

Discussion: SEN. CHRISTIAENS I find it ludicrous to be dealing with department bills without having the right people here to answer our questions. CHAIRMAN SWYSGOOD The department was informed before they left that executive action would take place and I'm going to continue with it. I apologize to Mr. Anderson for this.

SEN. LARRY BAER We may have put this bill in the position of requiring a two-thirds vote on the floor because of the indemnity issue on line 28-30. That may be of concern to people who want to pass this bill.

CHAIRMAN SWYSGOOD I'm going to delay further action on this bill until we can get someone from the department to answer these questions.

{Tape: 2; Side: B; Approx. Time Count: 10:20; Comments: None.}

GOVERNOR RACICOT'S ADDRESS ON SB 374

GOVERNOR MARC RACICOT I appreciate your indulgence of this unusual circumstance. This is an issue of significant magnitude and I wanted to provide the opportunity for you to cross examine me because this issue is before you as a result of my decision. I understand that the committee is substantially elevated in mood in reference to SB 374 and I can understand why. I may be able to provide some insight and persuasion to have you act favorably on this particular piece of legislation. This is the product of an extraordinarily conservative Republican congress and I understand not every member of congress was aware of what they were doing. There are some intrusive portions of this bill that have caused you concern, but there are practical reasons to carefully think this decision through. It is my understanding that you have not had any objections lodged by the business community, I believe they recognize we may sacrifice the opportunity to continue to move forward with the progressive welfare reform process you put in place during the last legislative session and we will also place our child support capabilities in substantial disarray. We have been informed, in unequivocal terms, by the U.S. Department of Health and Human Services that if we do not proceed in this direction we will not be in the position to proceed with the revenue sharing arrangement we presently have in place. There is a great deal riding on your decision. You may have to hold your nose as you move in this direction, but approving this piece of legislation is the right thing to do.

CHAIRMAN SWYSGOOD The problems with this bill crosses both sides of the aisle. I'm grateful that you are willing to listen to our concerns as it relates to the intrusiveness of this bill. We

would appreciate if you convey our feelings regarding this bill to the people in Washington.

SEN. LYNCH I'm concerned about what ultimately happens to the poor and welfare reform. Evidently we will not lose any old money but we will not get the new money which could be as high as \$52 million. Some people advocate that won't happen. How strong is the assurance that the federal government will withhold our entire grant? **GOV. RACICOT** In my understanding, we are not just talking about new funds that have been made available. This includes the funding for the welfare reform proposals that are linked to child support enforcement. I have a letter dated January 7, 1997 addressed to **MaryAnn Wellbank** from the program manager in the Department of Health and Human Services that states this is unequivocal. There are many states that have the same concerns but have complied. Wyoming is lodging some resistance but they meet on a yearly basis. Resistance has not been successful so far and I don't anticipate it will be. My best analysis is that there will be no exceptions with this situation.

SEN. DARYL TOEWS It seems to me we've been through this before with Goals 2000. If enough states hold resistance to this the federal government should respond. **GOV. RACICOT** I suggest losing a month or two would be very difficult for us to cope with in terms of our welfare programs that are presently in place. In reference to Goals 2000, I don't believe that what Montana ultimately did changed in any significant degree what occurred in congress. There were some changes but they were in contravention to what this legislature wanted to happen, that was to provide the opportunity for individual school districts to directly access Goals 2000 without going through the State of Montana. The margins are not quite the same as they were in reference to the Goals 2000 issue.

SEN. BAER I fail to see the urgency in making the decision on this bill at this time. **Sen. Burns** was unaware of many of the intrusive requirements in this bill and believes many of these things were inserted administratively. He has offered to work with us to ameliorate the offensiveness of the bill. We need to approach this with great caution. I have difficulty with the communication you received from the federal government on January 7, 1997 saying other programs would lose funds. There was a recent decision in the 4th circuit court stating the language must be clear and specific and must specify the conditions whereby the grant is awarded and paid to the state. I think there is a misinterpretation as to which funds will be lost and I believe funding directly connected to this program may be refused if we don't comply. I feel we have the opportunity to work with them to come up with something the federal government and the State of Montana can live with. Deciding on the this bill right now would be reckless and premature. **GOV. RACICOT** I respect your intuitions concerning state sovereignty and protection of our fundamental rights. My understanding of the legislation is

that it does specifically tie the ability to receive funds under the program, Temporary Assistance for Needy Families, to having a child support mechanism in place that meets the requirements of sub-part B and that is contained within this legislation. There may be opportunity for improvements to be made. I think it is a very risky gamble to proceed in a direction of refusing, up front, the requirements that are set before us, hoping that policy will be reformed as a result of action taken by the Montana legislature. That is a fanciful hope and large risk that we should not take. My view would be that we continue to pursue reformation of this arrangement. I do not know how we will address the requirements of our welfare and child support laws if this bill doesn't pass.

SEN. CHRISTIAENS Does this bill need to be passed in its entirety or can it be modified? Are our welfare reform waivers in jeopardy if we do not pass this bill? **GOV. RACICOT** There is always speculation on how we can modify a bill, I have no way of telling you if that is possible. My advice is that making a modification to remove requirements is a placebo. This one size fits all process that occurs in Washington D.C. occurs because it fits all and is one size. That is why we have some of the requirements we currently have. I don't believe this will threaten the waivers but it will remove all of the funding so there wouldn't be much need for a welfare program or waiver in the state.

SEN. FRANKLIN I would like a little more information on the community response to this. **GOV. RACICOT** My information is second hand but accurate. I've been informed by members of my staff who have spoken with the Chamber of Commerce and National Federation of Independent Business. They are conspicuously absent because they have decided not to be here to offer their objections.

SEN. WATERMAN Regarding the idea that we shouldn't rush into this, I believe we are already receiving TANF funds. If we delay action on this, do we put the funds we've already received at risk? **GOV. RACICOT** There is no mention in our correspondence from the federal government that there would be a retroactive liability. There is a clear, unequivocal reference to immediate suspension.

SEN. MOHL Is Wyoming going to lose a full year of funding? **GOV. RACICOT** I don't know the answer to that question. They have lodged some objections and have the same sentiments that you have.

SEN. JERGESON If we fail to pass this bill and the sanction is imposed, would your likely response be to pursue a court battle or call us for a special session to address the issue? **GOV. RACICOT** I doubt there would be much of an escape clause. It would seem to me I would have to consult with the legislature

because it is a massive reduction in the funding available to do some very important things that are commanded by our law.

CHAIRMAN SWYSGOOD We appreciate your coming before us to answer questions. Your comments will be taken under advisement. **GOV. RACICOT** I'd be happy to come back any time.

{Tape: 3; Side: A; Approx. Time Count: 10:44; Comments: None.}

EXECUTIVE ACTION ON HB 83

Motion: SEN. LYNCH MOVES TO AMEND HB 83 BY STRIKING SUBSECTION 3, PAGE 8, LINES 28-30.

Discussion: SEN. LYNCH I think Mr. Anderson is correct but you don't insulate yourself from liability when you contract with someone else. If you are trying to indemnify the state from responsibility it takes a two-thirds vote in the legislature. **Mr. Ohler** This amendment was put on by the House Select Committee on Corrections and is not a department amendment. It places the cost of legal defense on the private contractor for incidents that occur in the private prison. We do that all the time with private providers.

SEN. LYNCH If a Montana prisoner murdered another Montana prisoner in Spur, Texas, you are saying the Texas facility would have to incur all the legal expenses. **Mr. Ohler** With this example, the surviving family members of the inmate who has been killed will file a lawsuit naming everyone they can possibly name, probably Dickens County, the Bobby Ross Group and the State of Montana. We have an indemnification clause in our contract with Dickens County where they are responsible for their negligence and they agree to defend and indemnify us if we get sued as a party to their negligence.

SEN. LYNCH Won't there always be negligence? Are we insulated from everything that happens? Can we do that? Does the court uphold that? **Mr. Ohler** Yes, we do that with the contract, they are responsible for their errors. The court does uphold that contract. We're still going to get sued and have defense costs but the Bobby Ross Group has to pay for our costs. This is true of all community correctional facilities in the state.

SEN. LYNCH Wouldn't it be smart for the state to send every bad boy out of our prison? **Mr. Ohler** Most places won't take the bad boys.

SEN. LYNCH WITHDRAWS HIS MOTION TO AMEND.

SEN. CHRISTIAENS Pre-release centers currently operate under the same language.

SEN. KEATING Item #18 on the department amendments (EXHIBIT #4), is that clean-up language or is it necessary? **Mr. Ohler** The

Motion: SEN. KEATING MOVES SB 267 DO PASS AS AMENDED.

Discussion: SEN. KEATING SB 267 doesn't have to have a \$6 million shortfall in it. We could arrange for appropriate spending that would bring about reclamation and remediation for the extraction industries in the state that have identified hazardous waste dumps, etc. We could have more appropriate spending by refining the method of appropriation as well as changing the direction on some of the programs. I think it would be beneficial to the state to accomplish remediation within the available money and not adding General Fund. This could be done if the committee would want to reconsider the previous amendments.

SEN. CHRISTIAENS I oppose this motion because the opportunity to make this work failed with the last motion.

Motion/Vote: SEN. MOHL MAKES A SUBSTITUTE MOTION TO TABLE SB 267. THE MOTION CARRIED 17-0 ON ROLL CALL VOTE.

{Tape: 3; Side: A; Approx. Time Count: 11:05; Comments: None.}

RECONSIDER HB 208

Motion: SEN. MILLER MOVES TO RECONSIDER ACTION ON HB 208.

Discussion: SEN. MILLER This is a bill REP. MARSHALL brought in. I'm not clear why it failed but I would like to reconsider our actions so we can discuss the bill.

SEN. LYNCH I oppose the motion. This bill was killed by a convincing majority. I don't think the fines need to be increased. I think the ignition interlock device should work.

SEN. MILLER With SEN. LYNCH'S amendment this bill goes to the white collar worker. This would give us some more options so we aren't filling up our prisons. I hope you will support my motion.

Vote: THE MOTION TO RECONSIDER ACTION ON HB 208 FAILED 7-10 ON ROLL CALL VOTE.

{Tape: 3; Side: A; Approx. Time Count: 11:12; Comments: None.}

EXECUTIVE ACTION ON SB 374

Motion: SEN. LYNCH MOVES SB 374 DO PASS AS AMENDED.

Discussion: SEN. LYNCH This is our last day to reconsider SB 374.

SEN. BAER I'm not going to reiterate everything I've said before. I was going to ask the Governor to provide us with proof that we will lose our funding for that contract if we refuse a

future contract. I don't think that can be shown after the decision in Virginia which happened a month after the Governor received his letter. Let's not confuse facts with suppositions. We should not leap haphazardly into this. We can work with everyone involved to come up with a solution to this problem without being threatened by the federal government. There is no urgency to do this right now. To change our position on this would be an abdication of the power of the legislature to the executive. A lot of people already suspect and allege that and I don't want to give credence to that allegation. Let's negotiate the terms before agreeing to the contract.

CHAIRMAN SWYSGOOD I hate this bill with a passion but I don't think the 17 of us should make this determination. This is a bill that the full body of the Senate needs to discuss. I'm going to vote for this bill to get it on to the floor and I hope the problems we are having with this bill get back to Washington. This is not right. We've made tremendous strides and saved considerable amounts of money with the bill we passed last session relating to welfare reform. That is working. The federal government could throw their muscle at Montana and a lot of the reform we put in last session could be at jeopardy. I don't know that I will vote for this bill on the Senate floor but I am not going to hold it up in this committee without the full Senate having the opportunity to debate this and hear the problems we are facing.

SEN. LYNCH I think we could come up with the money if this were \$1-2 million. I'm thinking the people who will not be served are the ones who cannot defend themselves. I hate the bill as much as anyone else but I have to make the motion in good conscience.

SEN. JENKINS Why doesn't the Department of Public Health and Human Services and the Governor have more current correspondence on this matter? **MaryAnn Wellbank, DPHHS** We do, we handed the letter dated March 12, 1997 out the last time we were here. They feel the decision does not apply, Title IV-D funding is dependent on these requirements and they reiterated the severity of the consequences to Montana which are approximately \$52 million.

SEN. BAER An erroneous opinion and just an opinion. The court rules otherwise.

Vote: THE MOTION THAT SB 374 DO PASS AS AMENDED CARRIED 11-6 ON ROLL CALL VOTE.

{Tape: 3; Side: B; Approx. Time Count: 11:20; Comments: None.}

EXECUTIVE ACTION ON HB 114

Motion/Vote: SEN. CHRISTIAENS MOVES HB 114 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY. SEN. CHRISTIAENS will carry HB 114.

**MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE**

ROLL CALL

DATE

3/21/97

NAME	PRESENT	ABSENT	EXCUSED
SEN. CHUCK SWYSGOOD, CHAIRMAN	✓		
SEN. TOM KEATING, VICE CHAIRMAN	✓		
SEN. LARRY BAER	✓		
SEN. TOM BECK	✓		
SEN. JIM BURNETT	✓		
SEN. B.V. "CHRIS" CHRISTIAENS	✓		
SEN. EVE FRANKLIN	✓		
SEN. LOREN JENKINS	✓		
SEN. GREG JERGESON	✓		
SEN. J. D. LYNCH	✓		
SEN. DALE MAHLUM	✓		
SEN. KEN MILLER	✓		
SEN. ARNIE MOHL	✓		
SEN. LINDA NELSON	✓		
SEN. MIKE TAYLOR	✓		
SEN. DARYL TOEWS	✓		
SEN. MIGNON WATERMAN	✓		

SEN:1997
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MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE
ROLL CALL VOTE

DATE 3/21/97 BILL NO. SB374 NUMBER _____

MOTION: DPAA

NAME	AYE	NO
SEN. CHUCK SWYSGOOD, CHAIRMAN	✓	
SEN. TOM KEATING, VICE CHAIRMAN		✓
SEN. LARRY BAER	✓	✓
SEN. TOM BECK		✓
SEN. JIM BURNETT		
SEN. B.F "CHRIS" CHRISTIAENS	✓	
SEN. EVE FRANKLIN	✓	
SEN. LOREN JENKINS	✓	
SEN. GREG JERGESON	✓	
SEN. J. D. LYNCH	✓	
SEN. DALE MAHLUM	✓	
SEN. KEN MILLER		✓
SEN. ARNIE MOHL	✓	
SEN. LINDA NELSON	✓	
SEN. MIKE TAYLOR		✓
SEN. DARYL TOEWS		✓
SEN. MIGNON WATERMAN	✓	
	11	6

SEN:1997
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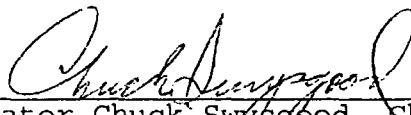
SENATE STANDING COMMITTEE REPORT

Page 1 of 5
March 21, 1997

MR. PRESIDENT:

We, your committee on Finance and Claims having had under consideration Senate Bill 374 (second reading copy -- yellow), respectfully report that Senate Bill 374 be amended as follows and as so amended do pass.

Signed:


Senator Chuck Swysgood, Chair

That such amendments read:

1. Title, following line 5.

Insert: "CREATING AN ADVISORY BOARD TO ADVISE THE DEPARTMENT;"

2. Title, line 26.

Following: "81-1-102,"

Insert: "AND"

Following: "87-1-108,"

Strike: the remainder of line 26

3. Page 4, lines 1 and 2.

Following: "awarded"

Strike: the remainder of line 1 through "order" on line 2

4. Page 4, line 17.

Following: "assets."

Strike: "Upon request, this"

Insert: "This"

5. Page 4, line 18.

Following: "information"

Strike: "may"

Insert: "must"

Following: "courts"

Insert: "of this state"

Following: the first "and"

Insert: ", upon request, may be shared with"

6. Page 5, line 14.

Following: "by the unit;"

Strike: "and"

Insert: "(b) there is a board to act in an advisory capacity to the case registry and processing unit. The board shall advise

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the department in the policy, direction, control, and management of the case registry and processing unit and in determining forms, data processing needs, terms of contracts and cooperative agreements, and other similar technical requirements. Board members who are not employed by the department shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503. Except for members who represent the department, appointed board members shall serve for a term of 2 years. The board consists of five members as follows:

(i) a district court judge nominated by the district court judges' association;

(ii) a clerk of court nominated by the association of clerks of the district courts;

(iii) the supreme court administrator or designee;

(iv) two members, appointed by the department director, one from the child support enforcement division and one from the operations and technology division; and

(v) a representative of a county data processing unit, nominated by the association of clerks of the district courts; and"

Renumber: subsequent subsection

7. Page 13, lines 19 and 20.

Following: "SEQ."

Strike: the remainder of line 19 through "DEPARTMENT" on line 20

8. Page 14, line 30.

Following: "computer"

Insert: "or other reasonable"

9. Page 15, line 2.

Following: "computer"

Insert: "or other reasonable"

10. Page 17, line 15.

Following: "~~(a)~~"

Insert: "(a)"

11. Page 17, following line 18.

Insert: "(b) The employer shall treat an income-withholding order issued in another state that appears regular on its face as if it had been issued by a tribunal of this state. An employer may contact the department of public health and human services to determine whether the withholding order was issued by the appropriate authority."

12. Page 25, line 22.

Following: "number"

Insert: ", if known,"

13. Page 45, following line 4.

Insert: "(6) For purposes of credit rating reports by the department, the department shall indicate if the withholding is for delinquent support or for regular monthly support obligations."

14. Page 52, line 10.

Following: "party"

Strike: "and"

Insert: "or"

15. Page 53, line 22.

Following: "~~the~~"

Strike: "The"

Insert: "Within 60 days after the hearing has been concluded, any post-hearing briefs are received, and all the evidence submitted, except for good cause, the"

16. Page 54, line 8.

Following: "Procedure."

Insert: "When issuing a support order, the department shall consider whether any of the exceptions to immediate income withholding found at 40-5-411 apply, and, if an exception is applicable, the department shall include the exception in the support order."

17. Page 57, lines 11 and 12.

Following: "enforceable"

Strike: "to the same degree as a district court order,"

18. Page 57, line 12.

Following: "court."

Insert: "Contempt of court proceedings and writs of execution based on the administrative order may not be requested from the district court unless the administrative order is first docketed with the district court. The administrative order may not operate as a judgment lien, unless the order is first docketed with the district court or a lien is otherwise perfected under the laws of this state, including 40-5-248."

19. Page 61, line 21.

Following: "child"

Strike: the remainder of line 21

20. Page 69, lines 9 and 10.

Following: the second "the" on line 9

Strike: "clerk" on line 9 through "of" on line 10

Insert: "district"

21. Page 69, line 10

Following: "issue"

Strike: "an"

Insert: "a temporary"

22. Page 70, line 9.

Following: "8"

Strike: "7"

Insert: "8"

23. Page 71, line 22.

Following: "the"

Strike: "order"

Insert: "notice or after service of the income-deduction order on the payor"

24. Page 71, line 23.

Following: "issuance"

Insert: "or continuance"

25. Page 73, line 26.

Following: "~~10~~"

Strike: "8"

Insert: "7"

26. Page 80, line 28.

Following: "party"

Strike: "and"

Insert: "or"

27. Page 81, line 1.

Following: "hearing"

Insert: ":"

28. Page 81, line 2.

Following: "~~(a)~~"

Insert: "(a)"

29. Page 81, following line 10.

Insert: "(b) unless good cause is found, the department shall, within 60 days of receipt of a request for a hearing, conduct a hearing. Unless good cause is found, within 60 days after a hearing is held, any post-hearing briefs are received, and all

evidence has been provided to the department concerning a notice of intent to withhold income, the department shall inform the obligor whether income withholding must take place."

30. Page 81, line 29.

Following: "withholding."

Insert: "Whenever the notice of intent to withhold income is issued because an arrearage has accrued or additional income is being withheld to satisfy additional arrearages, unless good cause is found, within 60 days after a hearing is held, any post-hearing briefs are received, and all evidence has been provided, the department shall inform the obligor whether income withholding must take place."

31. Page 107, line 25 through page 109, line 21.

Strike: sections 99 and 100 in their entirety

Renumber: subsequent sections

-END-

HOUSE JUDICIARY

Page 11

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

SB0314	CRIPPEN, BRUCE	REVISE VENUE			
	3/03	3/21	CONCUR AS AMENDED	03/27 VOTE: 9-8	4/02
SB0320	BROOKE, VIVIAN	ESTABLISHING THE MONTANA GOVERNMENT ACCOUNTABILITY ACT			
	3/03	3/24	TABLED ON	03/27 VOTE: 10-8	
SB0329	HALLIGAN, MIKE	REVISE LAWS GOVERNING BUSINESS ENTITIES			
	2/21	3/25	CONCUR	03/27 VOTE: 18-2	3/27
SB0341	STANG, BARRY	FELONY PARTNER OR FAMILY MEMBER ASSAULT			
	3/03	3/24	CONCUR	03/24 VOTE: 17-0	3/25
SB0369	SWYSGOOD, CHARLES	ENDANGERING WELFARE OF CHILDREN INCL. CONTACTING CHILD AG. PARENTS' WISHES			
	3/03	3/24	CONCUR AS AMENDED	03/27 VOTE: 19-0	4/02
SB0374	HARGROVE, DON	REVISE CHILD SUPPORT LAWS TO COMPLY WITH FEDERAL REQUIREMENTS AND LAW			
	4/03	4/09	CONCUR AS AMENDED	4/14 VOTE: 11-9	4/15
SB0382	HARP, JOHN	GENERALLY REVISE PRIVATE SECURITIES LITIGATION LAWS			
	3/03	3/25	TABLED ON	03/27 VOTE: 11-9	
SB0383	CRIPPEN, BRUCE	CRIMINAL STREET GANG TERRORISM ENFORCEMENT & PREVENTION ACT			
	3/03	3/21	CONCUR	03/27 VOTE: 17-1	3/27

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on April 9, 1997, at 9 AM,
in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

HEARING(S) & DATE(S) POSTED: SB 374, POSTED 3/7/97

HEARING ON SB 374

Opening Statement by Sponsor: SEN. DON HARGROVE

{Tape: 1; Side: A; Approx. Time Count: 2.5; Comments: This set of minutes is recorded on four 60-minute tapes.

Proponents' Testimony:

GOV. MARC RACICOT

{Tape: 1; Side: A; Approx. Time Count: 20.5}

SEN. RIC HOLDEN

{Tape: 1; Side: B; Approx. Time Count: 0.1}

MARY ANN WELLBANK, Administrator, Child Support Enforcement Division, Department of Public Health and Human Services (DPHHS)

{Tape: 1; Side: B; Approx. Time Count: 6.8} EXHIBITS 1-6

HANK HUDSON, Administrator, Child and Family Services Division, DPHHS {Tape: 2; Side: A; Approx. Time Count: 3.4}

SHARON HOFF, Montana Catholic Conference

{Tape: 2; Side: A; Approx. Time Count: 7.1}

BETTY WADDELL, Montana Association of Churches

{Tape: 2; Side: A; Approx. Time Count: 10.4}

Informational Testimony:

DAVID OWEN, Montana Chamber of Commerce

{Tape: 2; Side: A; Approx. Time Count: 14.7; Comments: This witness said he was a very reluctant proponent and discussed his concerns with the bill. The Chairman ruled that he would be considered an informational witness.}

Opponents' Testimony:

REP. BOB KEENAN

EXHIBITS 7-7A

{Tape: 2; Side: A; Approx. Time Count: 19.9}

SEN. LARRY BAER

EXHIBIT 8

{Tape: 2; Side: A; Approx. Time Count: 23.7-Tape 2; Side B; 16.0; Comments: This witness referred to Exhibits 7 and 8 through he did not personally distribute Exhibit 8.}

Questions From Committee Members and Responses:

{Tape: 2; Side: B; Approx. Time Count: 16.8-Tape 4; Side A; 20.5; Comments: Chairman Clark appointed a subcommittee to be made up of REPS. DAN MCGEE, Chair, WYATT, SANDS, SOFT, ELLINGSON and BOHARSKI to more closely scrutinize the bill and report back to the full committee with recommendations.}

Closing by Sponsor: SEN. HARGROVE

{Tape: 4; Side: A; Approx. Time Count: 20.7; Comments: .}

Motion: REP. MCGEE moved to adjourn. The meeting wad adjourned.

Joanna Gunderson

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION



MARC RACICOT
GOVERNOR

LAURIE EKANGER
DIRECTOR

STATE OF MONTANA

FAX (406) 444-1370
(406) 442-7278

3075 N MONTANA, SUITE 112
PO BOX 202943
HELENA, MONTANA 59620-2943

EXHIBIT 1

DATE 4/9/97

SB 374

April 3, 1997

TO: Bob Clark, Chair and Members of the House Judiciary Committee

FROM: Mary Ann Wellbank, Administrator *MAW*

RE: SB 374

SB 374, sponsored by Senator Don Hargrove, is the department's bill to comply with the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

The bill has now been referred to the House Judiciary Committee. The CSED has prepared the attached materials to assist you in your consideration of the bill. **These materials replace and enhance the materials you received March 13, 1997.**

The white notebook contains a section by section analysis of SB 374, with federal references and a section description behind each section of the bill. A copy of the fiscal note appears at the back of the book. The separate, light pink ring-bound handout contains federal reference material, including a copy of Title IV-D of the federal Social Security Act, as amended by PRWORA; a copy of the Uniform Interstate Family Support Act; a federal action transmittal providing instructions for requesting exemptions from the mandatory laws and procedures of 42 USC 666; letters from the federal Department of Health and Human Services describing the consequences to states for failure to enact the requirements of PRWORA; record of votes of U.S. Congress on the federal legislation, and a publication on the new hire reporting programs of 28 states.

Thank you for your consideration.

c: Senator Don Hargrove, Sponsor
Laurie Ekanger, DPHHS Director

Exhibit # 1

3 Ring binder - Analysis of SB 374

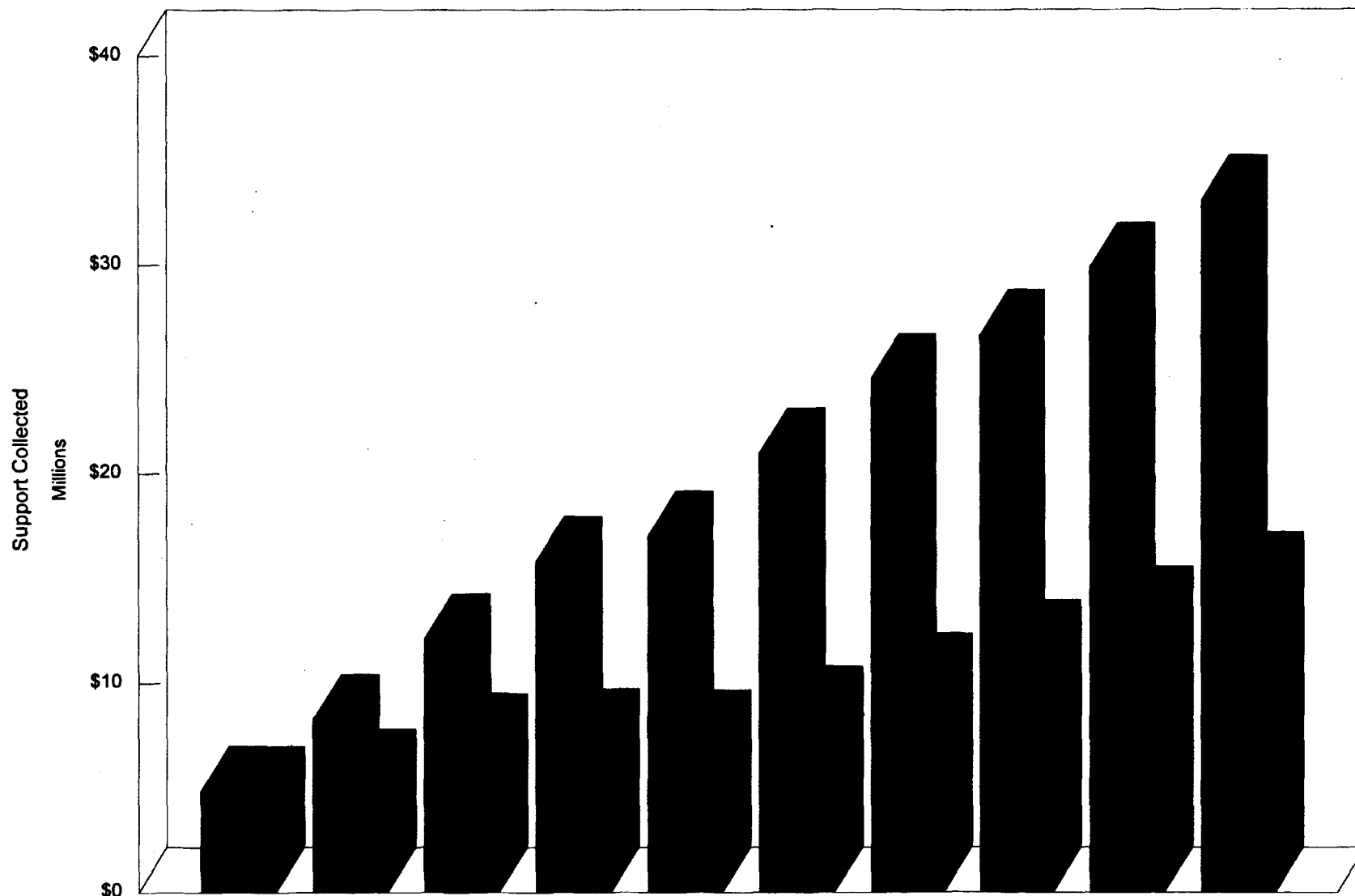
The full exhibit is available from:

MT Historical Society Archives
225 North Roberts
P.O. Box 201201
Helena, MT 59620-1201
Phone # (406)444-4774

EXHIBIT 2
 DATE 4/9/97
 SB 374

CHILD SUPPORT ENFORCEMENT

Annual support collected



	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
NAFDC	\$4,813,719	\$8,247,183	\$12,086,452	\$15,778,057	\$16,980,455	\$20,926,669	\$24,526,717	\$26,616,300	\$29,816,300	\$33,016,300
AFDC	\$4,793,883	\$5,629,562	\$7,338,885	\$7,556,289	\$7,497,791	\$8,642,199	\$10,191,192	\$11,811,627	\$13,411,627	\$15,011,627

Annual Summary of Major Activities

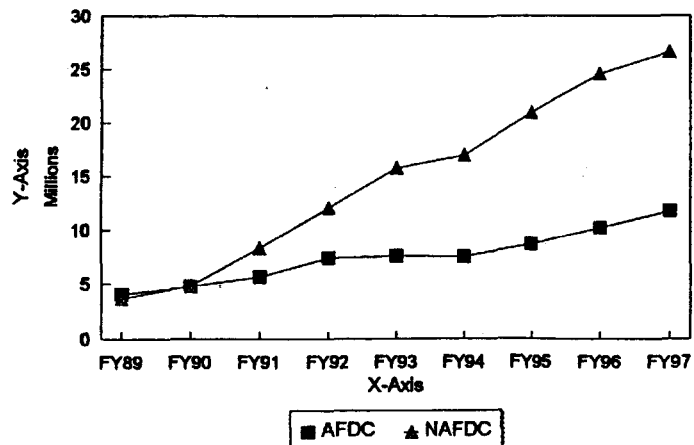
Filename: g:\data\adu\1731\LEDGER6.WK4

Print Range: MAWANUL

FINANCIAL HISTORY

YEAR	TOTAL AFDC COLLECTIONS	AFDC % CHNG	TOTAL NAFDC COLLECTIONS	NAFDC % CHNG	TOTAL COLLECTIONS	TOT % CHNG	AFDC % OF TOT	NAFDC % OF TOT	TOT DEPT EXPENDITURE	TOT COL/EXP
SFY89	\$4,093,242	0.00%	\$3,668,781	0.00%	\$7,762,023	0.00%	52.73%	47.27%	\$1,882,581	\$4.12
SFY90	\$4,793,883	17.12%	\$4,813,719	31.21%	\$9,607,602	23.78%	49.90%	50.10%	\$2,864,057	\$3.35
SFY91	\$5,629,562	17.43%	\$8,247,183	71.33%	\$13,876,745	44.44%	40.57%	59.43%	\$4,333,912	\$3.20
SFY92	\$7,338,885	30.36%	\$12,086,452	46.55%	\$19,425,337	39.98%	37.78%	62.22%	\$7,224,918	\$2.69
SFY93	\$7,556,289	2.96%	\$15,778,057	30.54%	\$23,334,346	20.12%	32.38%	67.62%	\$7,243,200	\$3.22
SFY94	\$7,497,791	-0.77%	\$16,980,455	7.62%	\$24,478,246	4.90%	30.63%	69.37%	\$8,340,104	\$2.94
SFY95	\$8,642,199	15.26%	\$20,926,669	23.24%	\$29,568,868	20.80%	29.23%	70.77%	\$8,846,937	\$3.34
SFY96	\$10,191,192	17.51%	\$24,526,717	17.20%	\$34,717,909	17.29%	29.35%	70.65%	\$11,231,824	\$3.09
SFY97	\$11,812,000	16.31%	\$26,616,000	8.52%	\$38,428,000	10.80%	30.74%	69.26%	\$12,801,165	\$3.00

TOTAL AFDC/NAFDC COLLECTIONS



TOTAL COLLECTIONS/EXPENDITURES

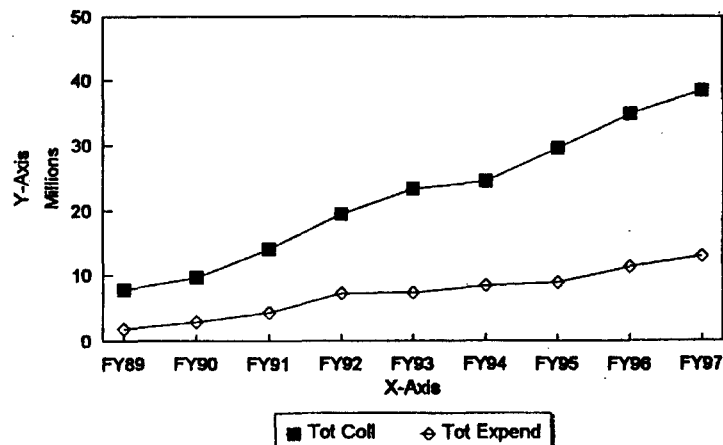
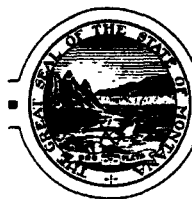


EXHIBIT 3
DATE 4/9/97
SB 397 374

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

EXHIBIT 4
DATE 4/9/97
SB 374



MARC RACICOT
GOVERNOR

LAURIE EKANGER
DIRECTOR

STATE OF MONTANA

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3075 N MONTANA, SUITE 112
PO BOX 202943
HELENA, MONTANA 59620-2943

April 9, 1997

To: Chairman Clark and Members of the House Judiciary Committee

From: Mary Ann Wellbank, Administrator, Child Support Enforcement Division

Re: Impact of Commonwealth of Virginia vs. Riley (US Court of Appeals, Fourth Circuit, February 5, 1997) on SB 374

As SB 374 was considered by Senate Finance and Claims Senator Baer raised the issue of the impact of the Riley case on a potential failure of this state's State Plan for the provision of Title IV-D services. I have attached a copy of the Riley decision (although I did not include the lengthy dissent) and an opinion from the Office of General Counsel, Administration for Children and Families, Department of Health and Human Services, about the impact of Riley on failure to comply with the provisions of Title IV-D of the federal Social Security Act, 42 USC 651 et seq.

After reviewing the Riley opinion, the Office of General Counsel of the Administration for Children and Families, of the federal Department of Health and Human Services advised us that the Riley decision, concerning conditions for federal financial assistance for the education of disabled students under 20 USC 1411 et seq., is distinguishable from the provisions of Title IV-D. The Office of General Counsel explained that the Individuals with Disabilities Education Act does not condition funding upon the states' continued provision of education to handicapped students in the particular instances at issue whereas, under Title IV-D, each State must have a State Plan that meets the requirements of 42 USC 654 and complies with the provisions of 42 USC 666 before the Secretary of the Department of Health and Human Services will approve the State Plan for federal financial assistance.

The Riley court after examining the IDEA, did not find any clear and unambiguous provision requiring every disabled child be provided with a free education regardless of state disciplinary policies for expelling students for criminal or other serious misconduct wholly unrelated to their disabilities. The court then concluded that the federal administrators could not withhold federal funds as long as Virginia was otherwise in conformity with the conditions set out in the Act. Neither Department attorneys nor the Office of General Counsel for the federal Department of Health and Human Services believe there is anything in Riley to suggest that a state does not need to comply with conditions which are clear and unambiguous. The provisions of Title IV-D of the Social Security Act, 42 USC 651 et seq. and the amendments to that Act under the Personal Responsibility and Work Opportunity Reconciliation Act, P.L. 104-194, are quite clear and unambiguous as to the requirements for approval of a State Plan.

"Working Together To Empower Montanans"

COMMONWEALTH OF VIRGINIA DEPARTMENT OF EDUCATION,
Petitioner, v. RICHARD W. RILEY, United States Secretary of
Education; UNITED STATES DEPARTMENT OF EDUCATION,
Respondents. VIRGINIA SCHOOL BOARDS ASSOCIATION, Amicus
Curiae.

No. 95-2627

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

1997 U.S. App. LEXIS 2796

December 4, 1996, Argued

February 5, 1997, Decided

PRIOR HISTORY: [*1] On Petition for Review of an Order of the United States Department of Education. (94-76-0).

DISPOSITION: REVERSED.

COUNSEL: ARGUED: William Henry Hurd, Deputy Attorney General, OFFICE OF THE ATTORNEY GENERAL, Richmond, Virginia, for Petitioner. ON BRIEF: James S. Gilmore, III, Attorney General, Paul J. Forch, Senior Assistant Attorney General, Joan W. Murphy, Assistant Attorney General, C. Tabor Cronk, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL, Richmond, Virginia, for Petitioner.

Leslie A. Simon, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondents. Deval L. Patrick, Assistant Attorney General, Dennis J. Dimsey, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondents.

D. Patrick Lacy, Jr., Kathleen S. Mehfoud, HAZEL & THOMAS, P.C., Richmond, Virginia, for Amicus Curiae.

JUDGES: Before WILKINSON, Chief Judge, and RUSSELL, WIDENER, HALL, MURNAGHAN, ERVIN, WILKINS, NIEMEYER, HAMILTON, LUTTIG, WILLIAMS, MICHAEL, and MOTZ, Circuit Judges, sitting en banc. Chief Judge Wilkinson and Judges Russell, Widener, Ervin, Wilkins, Niemeyer, Hamilton, Luttig, Williams, Michael, and Motz voted to reverse. Judges Murnaghan and Hall voted to affirm.

OPINION: OPINION [*2]

PER CURIAM:

Part B of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. @@ 1411-20 (Supp. 1996), affords federal financial assistance to state and local education agencies for the education of disabled students. In order to qualify for funds under the IDEA, a state must submit a plan describing the policies and procedures governing the expenditure of the federal funds to the Office of Special Education Programs ("OSEP") for approval, and must meet certain additional requirements. One of these additional requirements is that the state "assure[] all children with disabilities the right to a free appropriate public education." 20 U.S.C. @ 1412(1) (Supp. 1996). The Secretary of Education is directed to suspend all IDEA payments to a state if, after notice and opportunity for a hearing, the Secretary determines that the state has failed to substantially comply with any of IDEA's additional requirements. See id. at @ 1416(a).

In August of 1992, the Commonwealth of Virginia submitted to OSEP its IDEA plan governing fiscal years 1993-95. The plan was conditionally approved and the Commonwealth received IDEA funding for 1993. The United States Department of [*3] Education subsequently learned that the State had in effect a policy -- like that the State maintains for its non-disabled students -- pursuant to which it could cease providing free education to disabled students who are expelled or suspended long-term for behavior unrelated to their disabilities. Invoking IDEA's requirement that states assure all disabled children "the right to a free appropriate education," the Department threatened to withhold Virginia's entire \$ 60 million annual IDEA grant for fiscal years 1994 and 1995 unless Virginia amended its policies to provide private educational services to each of the State's 126 disabled students who had been expelled for reasons wholly unrelated to their disabilities.

Virginia refused to so amend its policy, maintaining that IDEA does not prevent school officials from discontinuing educational services to disabled students so long as those students are suspended or expelled for reasons unrelated to their disabilities. Virginia petitioned this court for interlocutory review, and we ordered the Secretary of Education to conduct an evidentiary hearing. See *Commonwealth v. Riley*, 23 F.3d 80 (4th Cir. 1994). The United States [*4]

persisted in its position after the hearing, and on July 3, 1995, the Secretary issued a final ruling, providing in effect that, unless Virginia amended its disciplinary policy so it was no longer possible to discontinue the education of disabled students, the federal government could cut off all funding to Virginia under the IDEA.

Virginia appealed, claiming *inter alia* that, in order to condition a state's receipt of federal funds, Congress must clearly manifest through the language of the statute an unambiguous intent to do so, and that the IDEA included no such clear statement. On appeal, a divided panel of this court affirmed the Department of Education's construction of the IDEA and administrative ruling. See *Commonwealth of Virginia v. Riley*, 86 F.3d 1337 (4th Cir. 1996). Judge Luttig dissented. See *id.* at 1347-58. On October 11, 1996, the court granted Virginia's petition for rehearing *en banc*.

After reviewing the record and briefs, and following oral argument, Chief Judge Wilkinson and Judges Russell, Widener, Wilkins, Luttig, and Williams voted to reverse the ruling of the United States Department of Education and to adopt as their own the dissenting [*5] panel opinion of Judge Luttig, *Commonwealth v. Riley*, 86 F.3d 1337, 1347-1358 (4th Cir. 1996), which holds as follows:

1. In order for Congress to condition a state's receipt of federal funds, Congress must do so clearly and unambiguously. See *South Dakota v. Dole*, 483 U.S. 203, 207, 97 L. Ed. 2d 171, 107 S. Ct. 2793 (1987). Language which, at best, only implicitly conditions the receipt of federal funding on the fulfillment of certain conditions is insufficient to impose on the state the condition sought.

2. Title 20, U.S.C. @ 1412(1) guarantees that all children with disabilities be provided "the right" to a free public education; this section does not purport to require that every disabled child be provided a free public education regardless of state disciplinary policies governing the provision of educational opportunities to disabled students expelled or suspended for criminal or other serious misconduct wholly unrelated to their disabilities. Since the plain language of the IDEA does not, even implicitly, condition the receipt of IDEA funding on the continued provision of educational services to disabled students who are expelled or suspended long-term due to serious misconduct wholly unrelated [*6] to their disabilities, the United States Department of Education was without authority to condition the Commonwealth of Virginia's receipt of IDEA funding on the continued provision of free education to such students.

3. A substantial constitutional question under the Tenth Amendment would be presented were the Secretary of Education's interpretation of the IDEA upheld, as the withholding of the Commonwealth's entire IDEA funding allotment because of its refusal to provide private tutors to the 126 disabled students expelled or suspended for serious misconduct wholly unrelated to their disabilities resembles impermissible coercion, if not forbidden regulation in the guise of Spending Clause condition.

Judge Niemeyer wrote a separate opinion concurring only in Part I of Judge Luttig's dissenting panel opinion and in the judgment. Judge Hamilton wrote a separate opinion concurring only in Part I of Judge Luttig's dissenting panel opinion and in the judgment, which was joined by Judge

Ervin. Judge Michael wrote a separate opinion concurring in the judgment. Judge Motz wrote a separate opinion concurring in the judgment. Judge Murnaghan wrote a dissent, which was joined by Judge Hall. [*7] Judge Hall wrote a dissenting opinion.

Copies of Judge Luttig's dissenting panel opinion, and all other opinions filed in this case, are attached.

REVERSED

DISSENT BY: LUTTIG; MURNAGHAN; HALL

DISSENT: LUTTIG, Circuit Judge, dissenting:

For misconduct wholly unrelated to their disabilities, the Commonwealth of Virginia disciplines its handicapped students in the identical manner that it does its non-handicapped students. Believing that students -- handicapped or not -- who so completely disrupt the classroom as to prevent the educational process to continue or who actually commit serious crimes against society forfeit by their own misconduct their right to a free education, the Commonwealth expels such students from its classrooms until such time as they are willing to conform their behavior to that necessary for education to occur. During the period of expulsion, as part of the State's overall program for discipline in its public schools, the State allows its local school boards to suspend educational services to the expelled students. That is, for neither expelled handicapped nor expelled non-handicapped students does the Commonwealth require its local school boards to provide private [*8] tutors or other educational alternatives following expulsion, whether the expelled student finds himself in prison, in detention, or at home. Explaining its reasons for this policy, the State says: "[A] caring public school organization . . . applies this discipline as a last resort 'wake-up' call of accountability." Br. at 9. And, within the Commonwealth, this disciplinary tool has proven to be one of the most effective means of instilling a sense of personal responsibility and accountability in the few obstinately antisocial among the State's youths. Indeed, the experience of the State is that "it is rare for an expelled student, when readmitted [which most are], to be expelled again." Id. at 11.

Bringing the full weight of the Federal Government to bear against the Commonwealth's educational policy decision not to require private tutors in prisons and elsewhere for students who have committed serious crimes or otherwise so disrupted the educational process as to require their expulsion, the Department of Education has, in the first such enforcement action ever against a state, withheld Virginia's entire \$ 60 million annual Individuals with Disabilities Education Act ("IDEA") [*9] grant until the Commonwealth capitulates to the Department's demands that it provide private educational services to these expelled handicapped students, 126 in number. This, notwithstanding that the State continues to provide education to the some 128,000 handicapped students who have not abused the educational opportunity provided them through the cooperative efforts of the Commonwealth and the United States, including those handicapped students whose misconduct warrants expulsion but who are not expelled because their misconduct relates to their disabilities.



DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR
CHILDREN AND FAMILIES

MAR 12 1997

Region VIII
Federal Office Building
1961 Stout Street
Denver, CO 80294-3538

Ms. Mary Ann Wellbank
Program Administrator
Child Support Enforcement Division
Department of Public Health and Human Services
3075 N. Montana Avenue, Suite 112
P.O. Box 202943
Helena, Montana 59620

Dear Ms. Wellbank:

On January 7, 1997, I wrote to you to describe the consequences if a State fails to enact laws or otherwise conform to the Child Support Enforcement requirements of Title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193.

You provided a copy of a recent decision of the United States Court of Appeals for the Fourth Circuit (cited below) and asked for our opinion as to whether that decision affected the consequences described in my letter. We requested and received the following legal opinion from our Office of General Counsel:

You have asked us for our interpretation of the decision in Commonwealth of Virginia Department of Education v. Richard W. Riley, U.S. Secretary of Education, ("Riley"), Appeal No. 95-2627 (4th Cir., Feb. 5, 1997); 1997 U.S. App. LEXIS 2796. That per curiam decision has apparently been interpreted by some as supporting the general proposition that the Federal Government cannot cut off Federal funding to a State in the event that the State does not meet all of the conditions for receipt of the Federal funding. In the Riley decision, the appellate court decided that the Federal Government could not withhold the entire Federal special education grant of \$60 million due to the State's refusal to provide educational services to 126 handicapped students who were expelled from school for misconduct unrelated to their handicaps. The Court noted that the State continued to provide education to some 128,000 handicapped students and said that the funding was not conditioned upon the State providing education to all handicapped students.

The Riley decision analyzes and is predicated upon the Individuals with Disabilities Education Act ("IDEA"), and the conditions it sets for Federal financial assistance to State and local education agencies for the education of disabled students. See 20 U.S.C.A. § 1411-20. That statute however, is inapplicable to the Title IV-D Child Support

Enforcement Program, which has its own statute and regulations. See 42 U.S.C.A. § 651 et seq.

In Riley, an en banc panel of the Fourth Circuit Court of Appeals reversed the initial decision issued in Commonwealth of Virginia v. Riley, 86 F.3d 1337, 1347-1358 (4th Cir. 1996), expressly holding that IDEA did not condition the States' receipt of special education funds "upon their continued provision of education to handicapped students expelled for criminal activity or other misconduct unrelated to their disabilities." Under the Child Support Enforcement statute, however, each State must have a plan that meets certain criteria (42 U.S.C.A. § 654), as well as have laws in effect that establish certain procedures (42 U.S.C.A. § 666), before the Secretary will approve the plan for Federal financial assistance.

As affirmed by this legal opinion, the consequences described in my letter of January 7 would not be affected by the Riley decision. For your information, I have enclosed Action Transmittal OCSE-AT-86-21, issued by the Office of Child Support Enforcement, which provides further clarification of the statutory basis for disapproval of State IV-D Plans and termination of Federal funding. Please note the first paragraph which states, "Congress has made no provision for limited or partial suspension of funds, as it did under section 404(a) of the Act for AFDC programs."

Once again, due to the severe consequences that may result, we urge you to take whatever steps are necessary to have the required legislation enacted and implemented.

Sincerely,

Jo B. Shannon

Jo B. Shannon
Program Manager
Child Support Enforcement

Enclosure



DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR
CHILDREN AND FAMILIES

Region VIII
Federal Office Building
1981 Stout Street
Denver, CO 80294-3538

JAN 07 1997

Ms. Mary Ann Wellbank
Program Administrator
Child Support Enforcement Division
Department of Public Health and Human Services
3075 N. Montana Avenue, Suite 112
P.O. Box 202943
Helena, Montana 59620

Dear Ms. Wellbank:

This is in response to your request for clarification of the consequences if a State fails to enact laws or otherwise conform to the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

In order for a State to receive Federal funding for the operation of its child support enforcement program, it must have an approved State IV-D plan which meets the requirements of section 454 of the Social Security Act (the Act). One of those requirements, specified at section 454(20)(A), is that the State must have in effect all of the laws required by section 466.

PRWORA made numerous changes to sections 454 and 466 of the Act. Although the effective dates of the PRWORA provisions vary, many of the new requirements will require State legislation to be enacted during the 1997 legislative session.

When a State fails to comply with all statutory requisites, its plan is subject to disapproval by the Office of Child Support Enforcement (OCSE). In accordance with sections 452(a)(3) and 455(a)(1)(A) of the Act, there would then be no authority to expend Federal funds under Title IV-D of the Act for the operation of the State's child support enforcement program.

Therefore, a determination that a State IV-D plan is disapproved will result in immediate suspension of all Federal payments for the State's child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE. In addition, in order to be eligible for a block grant for Temporary Assistance to Needy Families (TANF), section 402(a)(2) of the Act requires a State to certify that it will operate a child support enforcement program under the State plan approved under part D. Therefore, TANF funding would also be jeopardized if the State failed to enact the required child support legislation on a timely basis.

Due to the gravity of the consequences that may result, we urge you to take whatever steps are necessary to have the required legislation enacted and implemented.

Sincerely,

Jo B. Shannon

Jo B. Shannon
Program Manager
Child Support Enforcement



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of
Child Support EnforcementDirector
Washington, D.C. 20201PROGRAM INSTRUCTIONACTION TRANSMITTAL

OCSE-AT-86-21

December 31, 1986

TO: STATE AGENCIES ADMINISTERING CHILD SUPPORT
ENFORCEMENT PLANS APPROVED UNDER TITLE IV-D
OF THE SOCIAL SECURITY ACT AND OTHER
INTERESTED INDIVIDUALS

SUBJECT: Procedures for Determining That a State IV-D Plan is
Disapproved

BACKGROUND: Section 455(a)(1)(A) of the Social Security Act (the
Act) specifies that funds appropriated under title IV-D
of the Act shall be paid to States with approved State
IV-D plans. There is no authority to expend Federal
funds under title IV-D of the Act for the operation of a
State Child Support Enforcement Program unless such
State has an approved State IV-D plan. Congress has
made no provision for limited or partial suspension of
funds, as it did under section 404(a) of the Act for
AFDC programs.

Section 454 of the Act sets forth the statutory
requisites for the State IV-D plan. In addition,
regulations at 45 CFR 301.10 define the State IV-D plan
as a comprehensive statement submitted by the IV-D
agency describing the nature and scope of its program.
The State IV-D plan contains all the information
necessary for the Office of Child Support Enforcement
(OCSE) to determine whether the plan can be approved, as
a basis for Federal financial participation in the State
IV-D program.

Section 452(a)(3) of the Act requires that the Director
of the Office of Child Support Enforcement review and
approve State plans for Child Support Enforcement
programs under title IV-D of the Act. The authority to
approve State plans is delegated to the Regional Office,
but the Director retains authority for determining that
a State IV-D plan is not approvable.

Section 402(a)(27) of the Act provides that an approved
State IV-D plan is a requirement for approval of a State

plan under title IV-A. If a State IV-D plan is disapproved, Federal IV-A funding may be reduced pursuant to section 404(d) of the Act. A reduction under section 404(d) will be imposed in accordance with section 403(h) of the Act.

The Child Support Enforcement Amendments of 1984, P.L. 98-378, created a new section 466 of the Act which requires that all States, as a condition for approval of their State IV-D plan, must have in effect laws requiring the use of certain mandatory procedures to increase the effectiveness of their Child Support Enforcement programs. As a condition for State plan approval, section 454(20) of the Act provides that, to the extent required by section 466, States must have laws in effect and implement the procedures prescribed in or pursuant to such laws. For States which required legislation in order to conform their State IV-D plans to the revised statute, the requirement was delayed until the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after October 1, 1985. By this date, a State must have enacted any required legislation. By the end of the quarter in which this date occurs, the State must submit new or amended State plan material to the OCSE Regional Office. This deadline for submitting State plan material has passed with respect to a number of States, and is imminent for the majority of States.

OCSE has been tracking the progress of each of the States in enacting the new mandatory laws and is noting the date when each State's legislative session ends in order to ascertain when these laws are required to be in effect and when the State must submit new or amended State plan material for approval by OCSE in order to operate a Child Support Enforcement program according to the requirements of title IV-D of the Act. If a State fails to submit the necessary State plan amendments, OCSE will have to determine that the State does not have an approvable State plan.

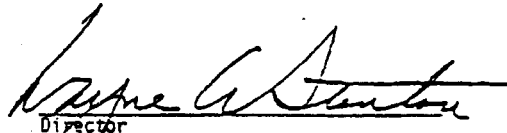
A determination that a State IV-D plan is disapproved will result in immediate suspension of all Federal payments for the State's child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE. If a State is dissatisfied with the Director's decision, reconsideration may be requested pursuant to 45.CFR 301.14. Withholding of Federal payments cannot be stayed pending reconsideration.

Although it is not required under Title IV-D of the Act, OCSE will give States an advance notice of "Intent to Disapprove" a previously approved State IV-D plan. The

State will then be permitted the opportunity to waive reconsideration of the Director's final decision and to exercise, prior to the State plan approval/disapproval decision, the right to a hearing under the procedures set forth at 45 CFR Part 213. If the State elects to pursue its hearing rights prior to issuance of the Director's decision, no further administrative appeal will be allowed.

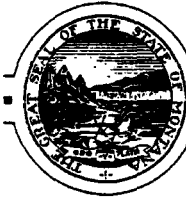
CONTENT: This action transmittal addresses the process for disapproving a State IV-D plan and the procedures for taking subsequent action to withhold Federal payments under title IV-D of the Act, including provision for notice and an optional hearing to States prior to disapproval.

INQUIRIES TO: OCSE Regional Representatives


Director
Office of Child Support Enforcement

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

EXHIBIT 5
DATE 4/9/97
SB 374



MARC RACICOT
GOVERNOR

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STATE OF MONTANA

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HELENA, MONTANA 59620-2943

April 8, 1997

TO: Scott A. Seacat, Legislative Auditor
FROM: Mary Ann Wellbank, Administrator
RE: Analysis of SB 374 for Representative Bob Keenan

Thank you for sharing a copy of your recent memorandum concerning SB 374 with the department. I conversed with Vickie Rauser last Friday and advised her the department would be recommending some revisions to the Legislative Audit Division's analysis. Given the short time frames your division had to review and analyze the bill, I can understand how some of the interpretations occurred. The federal legislation is extensive and complex, and not easily examined without a comprehensive history of federal and state child support legislation.

It may not have been clear to the LAD reviewers of SB 374 that the blue booklet we furnished containing the federal legislation is existing law *as amended* by PRWORA. The amendments to existing law that PRWORA provided are in bold; the existing law is in regular type. The existing federal law is already reflected in Montana law and not necessarily contained in SB 374. The bold, representing PRWORA, may require changes to Montana law, if Montana has not previously adopted those provisions.

As you know, CSED provided the LAD staff with extensive reference materials for this legislation, including a listing of the sections not mandated by PRWORA that we continue to provide to legislators considering this bill. These non-mandatory provisions do not attempt to go beyond the already substantial requirements of PRWORA but rather improve the cost effectiveness and efficiency of existing CSED procedures in other areas of the law. These areas are discussed in greater detail in the attached.

Given the opposition SB 374 has encountered, I'd very much appreciate your taking the opportunity to notify Representative Keenan of any areas you believe require clarification after reading this response. As you can imagine, presenting this bill is difficult and it would be very helpful if your office would issue a follow-up memo concurring in the PROWRA requirements where we have been able to shed additional light on them. The hearing is scheduled for House Judiciary at 9:00 am on Wednesday, April 9, and it is my understanding that several legislators on the committee and the press already have a copy of your memorandum. I am sure that the committee members will be relying on the information you provided to Representative Keenan, and that will be the basis for many of their questions about this legislation. I'd like to avoid any misunderstandings.

Thank you for your consideration. My direct line is 444-3338, if you have any questions.

c: Laurie Ekanger, DPHHS Director

CSED RESPONSE TO LEGISLATIVE AUDIT REPORT OF 4/2/97

The Legislative Audit report stated that PRWORA requirements were identified which they could not find addressed in SB 374. The first such "requirement" identified in the audit report, allows for enforcement of support orders against grandparents and is Section 373 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), P.L. 104-193. Section 373 of PRWORA, codified at 42 USC 666(a)(18) provides that the State may adopt, at state option, a law providing procedures under which a child support order may be enforced against the parents of the noncustodial parent. PRWORA does not require the adoption of any such law. Given the lack of legislative support for such a law in the past, and given that this provision was optional, the Department did not include such a provision in SB 374.

The second "requirement" identified as not addressed in SB 374 is that found at 42 USC 666(d). This is a provision of existing federal law and has been for a number of years. PRWORA did not amend this section. 42 USC 666(d) allows the Secretary of the federal Department of Health and Human Services to exempt a state, under criteria provided by the Secretary, from a requirement to enact a certain law or procedure. This is a provision of existing federal law and no state law is necessary.

The sections of the Audit report the CSED would like to address are:

Section 2 - Child Support Information and Processing Unit

Section 2 is the general section for the creation of a statewide automated data processing and information retrieval system required by 42 USC 654A. One of the duties of such a system is the collection and distribution of support payments. 42 USC 654A(g). The memorandum of the legislative auditor discusses only the disbursement portion of this section. As recognized by the memorandum of the legislative auditor, 42 USC 654B, a new section of Title IV-D created by PRWORA, does require the "state disbursement unit" to use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical, for the collection and disbursement of support payments, including procedures--

- (1) for receipt of payments from parents, employers, and other States, and for disbursements to custodial parents and other obligees, the State agency, and the agencies of other States;
 - (2) for accurate identification of payments;
 - (3) to ensure prompt disbursement of the custodial parent's share of any payment; and
 - (4) to furnish to any parent, upon request, timely information on the current status of support payments under an order requiring payments to be made by or to the
-

parent, except that in cases described in subsection (a)(1)(B), the State disbursement unit shall not be required to convert and maintain in automated form records of payments kept pursuant to section 466(a)(8)(B)(iii) [42 USCS @ 666(a)(8)(B)(iii)] before the effective date of this section.

While the CSED discusses the use of "computer technology", "automated procedures", "automated disbursement", "automated enforcement systems" and the requirement that each IV-D case with a child support order must be "electronically monitored", the CSED did not believe it appropriate to include in the state statute the qualifying clause "to the maximum extent feasible, efficient, and economical", believing this to be more an issue of compliance for federal audit purposes. That is, has the state implemented the requirements of 42 USC 654A to the "maximum extent feasible, efficient, and economical."

Section 4. Registration Procedures

The audit report states that PRWORA does not specify the level of detail this section proposes and that the State is requiring additional information be provided by the clerks of court to the State. 42 USC 654A, new with PRWORA, requires creation of a state case registry as part of the automated data processing and information retrieval system. The registry must contain records of each Title IV-D case receiving services by the agency and records with respect to "each support order established or modified in the State on or after October 1, 1998." 42 USC 654A(e)(1). Use of standardized data elements is required. The standardized data elements must include "names, social security numbers and other uniform identification numbers, dates of birth, case identification numbers and 'contain such other information (such as on case status) as the Secretary [of the federal Department of Health and Human Services by rule] may require. 42 USC 654A(e)(3). The registry must also include payment records, including records of the amount of the monthly support order, other amounts (including arrearages, interest or late payment penalties, and fees) due or overdue under the order; any amount that has been collected; the distribution of such collected amounts; the birth date of any child for whom the order requires support, and the amount of any lien imposed with respect to the order. 42 USC 654A(e)(4). In addition, 42 USC 666(c)(2)(A), a new PRWORA section, requires each state to have a law requiring each party to any paternity or child support proceeding to file with the tribunal and the State case registry upon entry of an order, and to update as appropriate information on location and identify of the party, including social security number, residential and mailing addresses, telephone number, driver's license number, and name, address, and telephone number of the employer.

For orders issued by the CSED, the CSED will already have the required information. For orders issued by the district courts, the abstract required by Section 3 of SB 374 will have to be completed. As with the vital statistics form currently required by MCA 50-15-302, the Department anticipates creation of a form on which the parties to the action will complete the required information and provide the completed form to the Clerk of Court at the time their order is entered. The Clerk will then transmit the form to the Department.

The CSED does not believe amendment to MCA 50-15-302 is necessary. MCA 50-15-302 concerns the gathering of certain vital statistics information concerning marriages. Support orders are issued in a broader range of cases. However, the Department anticipates that the form used for the abstracts required in Section 3, will also meet the requirement for the form required in existing MCA 50-15-302.

The audit report states that Section 4 creates a section of law allowing the department to enter into cooperative agreements with the district courts for transmission of this information electronically. This was added as a possible convenience to the courts and the department. Existing federal law sanctions the use of cooperative agreements for the provision of Title IV-D services. 42 USC 654(7). 42 USC 654(7) was amended with PRWORA to extend the use of cooperative agreements to Indian tribes or tribal organizations.

Section 5. Centralized payment center--mandatory payments to center.

The memorandum notes that 42 USC 666(b)(3)(A) provides exceptions to automatic income withholding. This is not a new provision of federal law; PRWORA did not change this requirement. Support orders are entered by the district court or the CSED under the authority of other statutes. Those statutes already provide for payment of support by automatic/immediate income withholding, or the exceptions thereto, at the time the support order is issued, which is the most appropriate place to address the exceptions. Consequently, there is no need to add this language to Section 5. The immediate income withholding provisions and exceptions thereto were part of the Family Support Act of 1988, P.L. 100-485, and have been part of Montana law since 1989 with the adoption of Section 32, Ch. 702, L. 1989. This language, and reference to this language, is found in existing statute at 40-4-204(5)(a), 40-5-226(10), 40-5-315, 40-5-411, and 40-6-116(8).

Section 6. Distribution of payments.

The audit report states Section 6 does not include the requirement that the state disbursement unit distribute all payments within 2 business days. 42 USC 654B, while describing how the state disbursement unit shall operate, does not require there to be a state law that provides that the payments must be distributed within 2 business days. Certainly, 42 USC 654B expresses the federal requirement to which the CSED will be held for federal audit purposes. To put the 2 day requirement in the statute unnecessarily appears to create an absolute right under state law to have the payment distributed within that time, when the existing enforcement mechanism under Title IV-D is a federal audit and sanctions thereunder. [The issue of a private right to enforce Title IV-D requirements is the subject of a case pending in the U.S. Supreme Court.]

Section 9. Directory of New Hires

The legislative auditor noted that subsection (b) allows the employer to submit the new hire information "in any other format agreed to by the department." This language was added for the

convenience of the employers. In addition, the auditor notes subsection (b) requires the new hire report to contain the date of hire and states that it may include the employee's date of birth. While federal law does not require the date of hire be included, it does require the report be submitted within 20 days of the date of hire. The department cannot determine if the report was timely without the date of hire included. It is true that federal law does not require the employee's date of birth be included and that is why the department stated that it may be provided.

The auditor also noted that the federal new hire reporting section, 42 USC 653A and 42 USC 654(a)(28), does not require the employer to report whether health insurance is available for the employee's children. Again, this is why the CSED provided that an employer may report this information. MCA 40-5-443(1)(e) already requires employers to provide this information upon request of the department.

42 USC 653A allows the state the option to set penalties for an employer's failure to report new hires. If the state is going to provide for penalties, the CSED must have some way to collect the penalty. Subsection (4)(c) is the CSED's suggestion because it does not require creation of an entirely new collection mechanism for this penalty. All penalties and fees enforced by the CSED are enforced in this manner. See, for example 40-5-202 (6)(b) and 40-5-210(a)(i) and (b). HB 195, passed by both houses this session, contains similar language giving the CSED the ability to collect the clerk of court filing fees back from a party.

Section 11. Automated access to financial records.

The audit report notes that several sections of this Section are not specifically required by PRWORA. It is true the Section 11 have several requirements not specifically required by PRWORA. However, the CSED does not believe the additional requirements are unreasonable in the light of the purpose of this section, which is to identify income and assets of an obligor that may be seized as payment for a child support obligation. 42 USC 666(a)(17) does require the name, record address, social security number, other taxpayer identification number and "other identifying information". An amendment in the Senate deleted the requirement that the obligor's address and other identifying information be provided.

While it is true PRWORA does not provide a time limit for a financial institution to provide this information to the department, federal law does provide that the match be run quarterly and the CSED worked with the financial institutions to provide a reasonable process; the financial institutions felt the requirement to report within 30 days of the request was reasonable. The information requested in subsections (3)(b),(c),(d), and (e) and subsection 4 was added both for the convenience of the financial institution and the department. If only limited funds are in the account, or the funds are not available for seizure due to a prior encumbrance held by the financial institution, the department might determine it is not cost effective to issue a warrant for distraint or lien or to obtain a writ of execution to obtain the funds.

Prior notification to an obligor by a financial institution of a data match request or lien would

defeat the purpose of the legislation, as any reasonably savvy obligor would withdraw funds or close his account.

The audit report also stated that the alternative to the CSED providing a list of obligors to the financial institution would require the financial institution to provide the Department with a complete listing of all depositors with the institution. This alternative would not require a financial institution to provide the Department with this information but would allow the financial institution to choose this option. In addition, this section was amended in Senate Finance and Claims to allow the data match from the CSED to the financial institution to be in a computer or other reasonable format, making it easier for a financial institution to accomplish the match without resorting to the alternative of providing the Department with a list of all the depositors.

The CSED worked closely with representatives of financial institutions to draft this section.

Section 12. Order to seek employment.

The legislative audit report states this section of the bill is more specific than PRWORA requires. The actual PRWORA requirements are at 42 USC 666(a)(15) which requires each state to have in effect laws requiring the use of the following procedures:

(15) Procedures to ensure that persons owing past-due support work or have a plan for payment of such support.-

(A) In general.- Procedures under which the State has the authority, in any case in which an individual owes past-due support with respect to a child receiving assistance under a State program funded under part A, to issue an order or to request that a court or an administrative process established pursuant to State law issue an order that requires the individual to-

(i) pay such support in accordance with a plan approved by the court, or, at the option of the State, a plan approved by the State agency administering the State program under this part; or

(ii) if the individual is subject to such a plan and is not incapacitated, participate in such work activities (as defined in section 607(d)) as the court, or, at the option of the State, the State agency administering the State program under this part, deems appropriate.

Section 607(d) as referenced in 42 USC 666(a)(15)(A)(ii) above, is the part of Title IV-A, 42 USC 607(d), the TANF program, concerning mandatory work requirements.

(d) Work activities defined. As used in this section, the term "work activities" means--

- (1) unsubsidized employment;
 - (2) subsidized private sector employment;
 - (3) subsidized public sector employment;
-

- (4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- (5) on-the-job training;
- (6) job search and job readiness assistance;
- (7) community service programs;
- (8) vocational educational training (not to exceed 12 months with respect to any individual);
- (9) job skills training directly related to employment;
- (10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;
- (11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and
- (12) the provision of child care services to an individual who is participating in a community service program.

Actually, the federal requirement, as detailed above, is not specific to either unemployment or underemployment. The requirement is that the state have laws requiring procedures to order the obligor to work or have a plan for payment of support, and if not incapacitated, participate in such work activities as ordered.

Section 14. Execution or withholding for support obligation.

The legislative auditor noted that this section, allowing for the withholding or garnishment of retirement benefits, does not include the University System Optional Retirement Program. This is because that system is not part of the Public Employees' Retirement Act General Provisions of Title 19, Chapter 2, Part 8, but has a separate statutory structure at Title 19, Chapter 21. As noted by the auditor, Section 20 of the bill allows for seizure of University System Optional retirement benefits for child and spousal support.

The auditor also noted that deferred compensation appears to fit the definition of income under PRWORA. 42 USC 666(b)(8), a new provision of federal law created by PRWORA, defines "income" subject to income withholding under 42 USC 666 (b) as "any periodic form of payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, worker's compensation, disability, payments pursuant to a pension or retirement program and interest." Deferred compensation may well be included in this definition, however, only where existing state law provided some exemption from withholding, execution, garnishment etc; was it necessary to change existing state law to comply with this section. For that reason, changes to the statutes concerning public retirement systems and the general garnishment statute, MCA 25-13-608, was necessary. Title 19, Chapter 50, concerning deferred compensation, did not have an exemption from garnishment provision or clause, unlike the retirement systems and 25-13-608.

Section 25. Amending 40-4-204. Child support--orders to address health insurance--withholding of child support.

The audit report states that while DPHHS states PRWORA requirements are for all IV-D and non IV-D cases to be included in the registry, the specific language in PRWORA states only that the registry is to be used to the "extent feasible".

The state case registry, as described in new 42 USC 654A(e), must contain records for all Title IV-D cases and for all support orders issued or modified in the state after October 1, 1998. 42 USC 654B, new with PRWORA, requires the creation of a state disbursement unit for the collection and distribution of support payments in all cases being enforced by the Title IV-D agency and for all support orders issued after January 1, 1994 which are subject to income withholding. The "extent feasible" language comes into play at 42 USC 654B (b) when it provides that the state shall use automated procedures, electronic process and computer driven technology to the maximum extent feasible, efficient, and economical. The "extent feasible" language does not qualify which orders or cases must be part of the registry or disbursement unit, but what technology is used to accomplish the purposes of the registry and disbursement unit. See also discussion of this same point in response to Section 2.

The audit report states that DPHHS states that subsection (6)(a)(iii) is not a federal requirement but that the department must currently request this insurance information. The audit report notes that the department did not cite the source of request. MCA 40-5-208 requires the Department to establish and enforce medical support orders. This same section allows the department to request the obligor provide certain information concerning the availability of health insurance coverage. MCA 40-5-443 allows the Department to obtain this information from the obligor's employer or payor. If this information were contained in the support order, enforcement of this obligation could occur more quickly.

Section 28. Amending 40-5-149. Continuing, exclusive jurisdiction.

The audit report indicates that this section of the bill does not adopt UIFSA verbatim, although the meaning is consistent with UIFSA.

The bill does not differ from UIFSA substantially, and the only deviations from UIFSA language are that UIFSA uses the term "Act" contained in brackets, to refer to UIFSA, while the bill, as well as current law, uses the term "Part." Terms which are bracketed in UIFSA are optional and give states latitude to choose terms consistent with state law. Montana codified UIFSA at Title 40, Chapter 5, Part 1, and therefore rather than referring to UIFSA as an "Act", the bill refers throughout the UIFSA sections to the "Part" where UIFSA is codified.

Section 29. Amending 40-5-151. Recognition of child support orders.

The audit report indicate that this section of the bill does not adopt UIFSA verbatim, although the meaning is consistent with UIFSA.

The differences from UIFSA include the following:

- The bill did not add the word "controlling" to the title;
- The bill uses the word "however" rather than change it to "but";
- The bill uses the word "controls" rather than "is controlling";
- The bill uses the word "that" instead of "which";
- The bill uses the word "part" instead of "act", as noted above;
- Minor changes in sentence structure.

Section 30. Amending 40-5-158. Proceedings under this part.

The audit report notes that this section deletes references to other statutes for no apparent reason.

This section of UIFSA merely lists the types of proceedings provided for in UIFSA. No reference to the specific sections of law is necessary.

Section 31. Amending 40-5-161. Duties of initiating tribunal.

The audit report indicates that the bill is more restrictive than UIFSA. Actually, Montana's suggested language is broader, not more restrictive than UIFSA. It is noted that subsection (3) refers to a responding state that has not adopted UIFSA or "another law" while UIFSA refers to "a law or procedure" similar to UIFSA.

This is correct. It was apparently an oversight when the bill was drafted, as other sections of UIFSA have been amended to add similar language. The omission of the clause "or procedure" is not a substantial change from UIFSA.

Section 34. Amending 40-5-164. Duties of support enforcement agency.

The audit report notes that the proposed language is not verbatim of UIFSA. The bill uses the term "promptly" rather than inserting a specific number of days. UIFSA refers to two days, although it is bracketed. As mentioned in previous sections, bracketed language in UIFSA, as with any uniform act, is optional. Therefore, the CSED chose to not include any specific time period in the law. However, the CSED must comply with the time frames for completing certain actions contained in federal regulations.

Section 35. Amending 40-5-173. Costs and fees.

The audit report again notes that this section of the bill is not verbatim of UIFSA.

The bill contains minor wording differences from UIFSA and includes a section not included in

UIFSA to clarify the relationship between this section and the statute concerning fees which is codified in Title 40, Chapter 5, Part 2.

Section 36. Amending 40-5-186. Effect of registration enforcement.

The Legislative Auditor's report has indicated that there may not be a need for the amendments to this section.

This section of the bill takes out reference to specific portions of UIFSA and inserts reference to "this part." UIFSA does not contain reference to specific sections. In addition, the bill in this section and other sections amending UIFSA provisions, has deleted citations to specific statutes and instead refers to the statutes by name or the entire part when possible.

Section 38. Amending 40-5-189. Procedures to contest validity or enforcement of registered order.

The Legislative Audit report notes that this section is not verbatim from UIFSA.

Subsection 1 was verbatim of UIFSA when the bill was originally drafted; however, a minor change was made to this UIFSA section by the Uniform Commissioners in January 1997. The section previously provided that an individual had 20 days from "the date of mailing or personal service of the" notice of registration. The amendment by the Uniform Commissioners, provided to the CSED by Attorney General Mazurek January 24, 1997, to delete "the date of mailing or personal service of the" was inadvertently not included in the bill, although the changes were provided to Legislative Council.

Section 39. Amending 40-5-194. Modification of child support order of another state.

The Legislative Audit report again indicates that the bill is not verbatim from UIFSA. They further indicate that a reference in subsection 1 is incorrect.

The auditors are correct that there is an incorrect reference in subsection 1, and that one section of UIFSA is missing. This section of the bill refers to Section 10 of the bill which concerns disclosure of information in the case registry and payment processing unit, and is not a part of UIFSA. This reference is incorrect. As initially drafted the reference was to Section X, meaning a yet unnumbered section. In the editing process, the X was changed to number 10. Section X was not included in the bill.

Section 40. Amending 40-5-195. Recognition of order modified in another state.

The Legislative Audit report indicates that this section is not verbatim from UIFSA.

The bill did change the sentence structure of one of the sentences slightly, which did not change its meaning. The other minor differences include using the word "that" in place of "which".

Section 41. Amending 40-5-196. Proceeding to determine parentage.

The report indicates that this section is not verbatim from UIFSA.

The bill modifies the UIFSA section slightly to reflect the impact of other Montana laws on this section.

Section 44. Amending 40-5-206. Central unit for information and administration-- cooperation enjoined--availability of records.

The Department needs further clarification from the legislative auditor as to which section of PRWORA apply this information gathering section to "all entities in the State including for-profit, nonprofit, and governmental employers". 42 USC 666(c)(1), requires the Title IV-D agency to have procedures "which give the State agency the authority to take the following actions . . . and to recognize and enforce the authority of State agencies of other states to take the following actions: . . .

(D) Access to information contained in certain records. - To obtain access, subject to safeguard on privacy and information security, and subject to the nonliability of entities that afford such access under this subparagraph, to information contained in the following records (including automated access, in the case of records maintained in automated data bases):

(i) Records of other State and local government agencies, including -

- (I) vital statistics (including records of marriage, birth and divorce);
- (II) State and local tax and revenue records (including information on residence address, employer, income and assets);
- (III) records concerning title to real and titled personal property;
- (IV) records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnerships, and other business entities;
- (V) employment security records;
- (VI) records of agencies administering public assistance programs;
- (VII) records of motor vehicle department; and
- (VIII) corrections records.

(ii) Certain records held by private entities with respect to individuals who owe or are owed support (or against or with respect to whom a support obligation is sought), consisting of -

- (I) the names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in the customer records of public utilities and cable television companies, pursuant to an administrative subpoena authorized by subparagraph (B);

and
(II) institutions (including information on assets and liabilities) on such individuals held by financial institutions.

The list of information to be provided to a Title IV-D agency in subsection (i) above is information from a state or local government agency. This is what subsection (2) of MCA 40-5-206 provides. The private entity information required in subsection (ii) of the federal law is described at subsection (3) of MCA 40-5-206.

Section 47. Amending 40-5-226. Administrative hearing--nature--place--time--determinations--failure to appear--entry of final decision and order.

The audit report states that PRWORA does not require administrative hearings to be held telephonically and does not provide examples of sanctions for failure to respond to a department order or subpoena. The majority of amendments to MCA 40-5-226 were not driven by changes in federal law due to PRWORA. This is one of the sections that the Department included on its list of non-mandated sections provided to Senate Committee members and discussed at SB 374 hearings.

This section, clarifies that CSED hearings are held telephonically. Telephone hearings provide a more cost-effective, convenient and efficient way to hold CSED hearings. In the majority of cases, the custodial parent and non-custodial parent do not live in the same city, and in many case not even the same state. Also, in many cases the parties cannot afford to travel to a hearing. If a party feels that he/she has been prejudiced by the lack of an in-person hearing, that party may request a de novo in-person hearing. While telephone hearings are not mandated by PRWORA, existing federal law requires the CSED to create expedited procedures. 42 USC 666(c). The CSED has held administrative hearings by telephone since at least 1983, and is attempting to clarify this in each statute containing a hearing right.

As to sanctions for failure to respond to a department order or subpoena, the only new part of these particular subsections, subsection (13) and (14) were made to comply with new PRWORA requirements. Specifically, Section 325 of PRWORA, codified at 42 USC 666(c)(1), requires that states have in effect laws which would give the CSED the authority to issue subpoenas for financial information, require entities to response to requests for employment information, obtain records of other state and local agencies, obtain customer records of public utilities and cable television companies, and impose sanctions for failure to comply with the subpoena or request for information.

The audit report also notes that PRWORA requires the parties to a modification receive notice that of a modification or that there will be no modification, within 14 days after issuance of the modification or determination. The report notes this time limit is not addressed in this section of the bill. This section of the bill does not deal with modifications of support orders. In addition, that requirement is found at 42 USC 654(12) which requires only that the State Plan provide that the agency will give such notice, not that the law must so provide.

Section 49. Amending 40-5-232. Establishment of paternity --notice of parental responsibility -- contents

The Legislative Audit report indicates that there is no basis in PRWORA for changing "paternity determination" to "paternal responsibility," that PRWORA language is not gender specific, as the language in the bill is, and that PRWORA requires notice of the ramifications of voluntary paternity to be provided to the mother and father, while the bill only requires notice to the alleged father.

The report is correct that PRWORA does not require the wording change from "paternity determination" to "parental responsibility." However, this wording change is a clarification of the notice which is served on an alleged father. This notice is not the determination of paternity, but is the notice which initiates the action to determine paternity.

Also, changing the word "person" to "alleged father" in this section is a clarification -- paternity is only established against an alleged father.

The audit report is correct that PRWORA requires notice to both the mother and father concerning the consequences and rights of signing an acknowledgment of paternity. As mentioned above, this section was updated to refer to the "alleged father," however, this is one place where it should not have been changed, and an amendment is necessary to require that information be provided to both the mother and the alleged father.

Section 50. Amending 40-5-233. Establishment of paternity--administrative hearing--subpoena--compulsory blood testing.

The audit report noted that subsection (2)(b) is more specific than PRWORA requires. Subsection (2)(b) is not a PRWORA requirement but is a clarification requested by the Department. Part of (2)(b) actually was moved from existing subsection (1). The remainder is a change this CSED is requesting to all of its statutes concerning administrative hearings. The subsection clarifies that CSED hearings are held telephonically. Telephone hearings provide a more cost-effective, convenient and efficient way to hold CSED hearings. In the majority of cases, the custodial parent and non-custodial parent do not live in the same city, and in many cases not even the same state. Also, in many cases the parties cannot afford to travel to a hearing. If a party feels that he/she has been prejudiced by the lack of an in-person hearing, that party may request a de novo in-person hearing. While telephone hearings are not mandated by PRWORA, existing federal law requires the CSED to create expedited procedures. 42 USC 666(c). The CSED has held administrative hearings by telephone since at least 1983, and is attempting to clarify this in each statute containing a hearing right.

Section 55. Amending 40-5-264. Cooperative Agreements.

The audit report stated that the "criteria language" for an Indian tribe or tribal organization was not included in the proposed amendments to this section. This section was enacted in 1989. 42 USC 654(7) has long provided that a state may enter into cooperative agreements for the

provision of IV-D services. With PRWORA that section was amended to state that the State Plan must "provide for entering into cooperative arrangements with appropriate courts and law enforcement officials and Indian tribes or tribal organizations (as defined in subsections (e) and (l) of section 4 of the Indian Self-Determination and Education Assistance Act (25 USC 450b)). The CSED believes its amendment to 40-5-264 complies with this requirement. An additional section of 42 USC 654, 42 USC 654(33) does contain extra qualifications about the tribes with which the state may enter into cooperative agreements.

Section 56. Amending 40-5-271. Registration of Support Orders.

The Legislative Audit report indicates that this section of the bill incorporates UIFSA guidelines into state law, but it does not accomplish a verbatim adoption of UIFSA. The auditors further indicate that they see no reason for holding the initial hearing by teleconferencing.

As noted in the CSED's summary of this section and the list of non-mandated sections of the bill provided to the Senate committees, changes to this section are proposed by the CSED and are not mandated by PRWORA. This section of the bill was not an attempt to adopt the provisions of UIFSA verbatim, nor is it required. UIFSA is codified at Title 40, Chapter 5, Part 1. MCA 40-5-271 is not a part of UIFSA but of existing law concerning the CSED's administrative authority. The UIFSA provisions concerning registration have already been adopted at 40-5-184 through 40-5-186 and 40-5-188 through 40-5-193. While some of the amendments in this section are borrowed from UIFSA, this section is a completely separate remedy from UIFSA.

MCA 40-5-271 is a process for CSED registration of foreign support orders but is not limited to interstate cases, that is, when one party lives in Montana, and one in another state, as is the case for UIFSA. UIFSA is an interstate remedy but Montana also has its own remedies. Wholly apart from UIFSA, there still is a need for a process to register a foreign support order when both parties now live in Montana but are subject to an existing foreign order. This is the purpose of MCA 40-5-271. With the amendments in this bill, the CSED is making the Montana registration process more like UIFSA, but it does not have to be exact, since this is not part of UIFSA.

This section, like Section 47, clarifies that CSED hearings are held telephonically. Telephone hearings provide a more cost-effective, convenient and efficient way to hold CSED hearings. In the majority of cases, the custodial parent and non-custodial parent do not live in the same city, and in many case not even the same state. Also, in many cases the parties cannot afford to travel to a hearing. If a party feels that he/she has been prejudiced by the lack of an in-person hearing, that party may request a de novo in-person hearing. While telephone hearings are not mandated by UIFSA or PRWORA, existing federal law requires the CSED to create expedited procedures. 42 USC 666(c). The CSED has held administrative hearings by telephone since at least 1983, and is attempting to clarify this in each statute containing a hearing right.

Section 61. Amending 40-5-305. Notice.

The audit report states that PRWORA requires "the State" to serve the obligor with notice . . ."

While this would be true when it is the state initiating income withholding, as is the case under Title 40, Chapter 5, Part 4, when the state is not initiating the income withholding or is not a party to a private action, as might be the case when the parties are not using IV-D services and are utilizing the courts under Title 40, Chapter 5, Part 3, this requirement should fall on the party petitioning the court for an income withholding order.

Section 67. Amending 40-5-312. Duties of payors.

The audit report suggested that replacement of the definition of "employer" with "payor" appears unnecessary. Currently, income withholding under this part applies only to wages, hence it is only employers who are honoring income withholding orders. See MCA 40-5-308(1), which states in pertinent part "... the district court shall issue an order to the obligor's employer ordering a deduction from the obligor's wages or salary for the payment of child support." PRWORA amends the definition of income subject to withholding under 42 USC 666 (b) as "any periodic form of payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, worker's compensation, disability, payments pursuant to a pension or retirement program and interest." 42 USC 666(b)(8). Because it is not just "wages and salaries" that are subject to withholding, it will no longer be only an "employer" that will be subject to receipt of an income withholding order. Hence the broader term "payor" is necessary. Payor is for purposes of this part is defined in an amendment to 40-5-303, which is section 59 of the bill. The definition in Section 1 is slightly different, and depending upon where Section 1 is codified, its definitions may not be applicable to other parts of Title 40, Chapter 5.

The auditor notes that subsection (1) has a 14 day requirement that does not appear in PRWORA. This is part of existing state law in compliance with existing federal regulation 45 CFR 303.100(f)(ix). "(1) To initiate withholding, the State must send the absent parent's employer a notice which includes the following: ... 'That the employer must implement withholding no later than the first pay period that occurs after 14 working days following the date the notice was mailed; ...'" Compliance with PRWORA did not require a change in this provision.

Section 75. Amending 40-5-414. Hearing.

The audit report is incorrect. 42 USC 666(a)(1)(A) provides:

Sec. 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement

(a) In order to satisfy section 454(20)(A) [42 USCS @ 654(20)(A)], each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part [42 USCS @@ 651 et seq.]:

(1) (A) Procedures described in subsection (b) for the withholding from income of amounts payable as support in cases subject to enforcement under the State plan.

(B) Procedures under which the income of a person with a support obligation imposed by a support order issued (or modified) in the State before October 1, 1996, if not otherwise subject to withholding under subsection (b), shall become subject to withholding as provided in subsection (b) if arrearages occur, without the need for a judicial or administrative hearing.

Subsection (b) is 42 USC 666(b). Several notable changes were made to this section including:

(b) The procedures referred to in subsection (a)(1)(A) (relating to the withholding from income of amounts payable as support) must provide for the following:

(4) (A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and the State must send notice to each noncustodial parent to whom paragraph (1) applies--

(i) ~~that the withholding has commenced;~~ and

(ii) of the procedures to follow if the noncustodial parent desires to contest such withholding on the grounds that the withholding or the amount withheld is improper due to a mistake of fact. (emphasis supplied)

(11) Procedures under which the agency administering the State plan approved under this part [42 USCS @@ 651 et seq.] may execute a withholding order without advance notice to the obligor, including issuing the withholding order through electronic means.

Given the language of 42 USC 666(a)(1)(A) and 42 USC 666(b)(4)(A), the CSED believes the State is required to have laws under which income withholding shall be commenced with a right to a hearing to follow. This is also the interpretation of the federal Office of Child Support Enforcement, the National Child Support Enforcement Association and the American Bar Association Family Law Section in materials it has provided to states to assist implementation of PRWORA.

Section 79. Amending 40-5-701. Definitions.

The Legislative Audit report indicates that this section does not comply with PRWORA, as all recreational licenses must be subject to suspension, not just those issued under special drawing. The audit report also notes that since the Legislature has approved an automated licensing system for the Department of Fish, Wildlife and Parks, all recreational licenses could be subject to suspension. The audit report further notes the differences between the procedures for suspension of recreational licenses from the current procedures for suspension of other licenses, such as driver's, professional, and occupational licenses.

The PRWORA section concerning license suspension, which is codified at 42 USC 666(a)(16), requires that each state have in effect laws requiring:

(16) Authority to withhold or suspend licenses. Procedures under which the State has (and uses in appropriate cases) authority to withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses, and recreational licenses of individuals owing overdue support or failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.

This section of PRWORA requires that each state have in effect laws allowing for the suspension of licenses, including driver's, professional and occupational, and recreational licenses. PRWORA requires that each state have in place procedures to suspend these licenses; however, it does not require that the same procedure must be followed for each category of licenses, nor does it specify that all licenses within the categories must be suspended. In short, PRWORA does not require any particular procedure be used. As mentioned in the CSED's summary, Montana adopted laws in 1993 authorizing suspension of driver's, professional and occupational licenses. Also as mentioned in the CSED's summary, the CSED worked closely with the Department of Fish, Wildlife and Parks to develop the procedures for suspension of licenses.

The automated licensing system proposed by the Department of Fish, Wildlife and Parks was only approved by the Legislature recently. Even though the automated system has now been approved, it will not be up and running for some time. Therefore, this automated system cannot currently be relied upon in the CSED's procedures for suspension of licenses.

The nature of a recreational license is much different than the other types of licenses (driver's, professional, occupational), and therefore different procedures had to be developed. Recreational licenses are the only ones that cannot be stayed or terminated once the suspension has occurred. One of the reasons for this is that a recreational license must be applied for/purchased every year and is useful for only a limited period of time, unlike the other types of licenses. Once the drawing for a special permit is held, there is no way to put the individual back in the drawing.

In conclusion, the CSED believes the bill is in compliance with the PRWORA requirement for suspension of licenses.

Section 81. Amending 40-5-703. Hearing -- order suspending license.

The Legislative Audit report notes that this section is concurrent with PRWORA, but that the section does not define what a "year" is since it could mean a license year, a calendar year or a 12-month period beginning on the date of suspension.

There is no mention of the term "year" in this section, and therefore, we are unsure why the term would need to be defined in this section. The meaning of "year" as it applies to recreational licenses is addressed in Section 82, amending 40-5-704, and Section 85, amending 40-5-711. These sections clarify that a denial of a recreational license is applicable for the next applicable

license year.

Section 85. Amending 40-5-711. Termination of order to suspend license.

The Legislative Audit report indicates that subsection (3) goes beyond PRWORA requirements and that there is no basis for the language.

As noted in the response to Section 79, because of the nature of recreational licenses, these types of licenses must be treated differently than driver's, professional and occupational licenses. Because recreational licenses must be applied for/purchased every year and are useful for only a limited period of time, once an individual has been denied a recreational license and the drawings have been held, there is no feasible way to terminate the suspension.

This procedure does not go beyond the PRWORA requirements. As noted above, PRWORA only requires that each state have in effect laws authorizing the suspension of licenses and requires that states have in effect procedures for the suspension of these licenses. Subsection 3 is part of the procedure for the suspension of recreational licenses and is in compliance with PRWORA.

Non-Mandated Sections of SB 374*

The following sections of SB 374 are not mandated by the PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996. An explanation regarding the purpose of each proposed section is provided for further clarification. These nonmandatory changes are important to ensure continued cost effectiveness and efficiency of CSED and to keep up with the current state of case law impacting CSED casework.

Section 46 amends MCA 40-5-225. This is the section under which the CSED establishes support orders. The Omnibus Budget Reconciliation Act of 1993 made changes to the creation and enforcement of medical support, or health insurance orders, and Montana adopted these which are codified at Title 40, Chapter 5, Part 8. However, in order for the CSED to thoroughly and efficiently consider the requirements for a medical support order, it makes more sense for this to be done at the same time the support order was being established, rather than in a separate proceeding with a separate hearing at which both parents must also participate, since the obligation to pay for health insurance can impact a child support obligation.

Section 47 amends MCA 40-5-226 for a number of purposes. The following changes are not mandated; however, the amendments to this section also include changes mandated by PRWORA. The department is clarifying that CSED hearings may be held telephonically. Then, since both parents, as well as the CSED may be parties to an action, the CSED had to clarify when a default occurs.

Some of the mandated changes in this section include the following. Federal law requires that obligees or custodial parents be given notice of actions when they are not parties. Any order established by the CSED, just as orders established by the district court, must conform to the case registry and processing requirements. MCA 40-5-226 is also the section which sets out the hearing officer's powers. In order to comply with the federal requirement that various entities provide information to the department upon request and others upon receipt of a subpoena, the CSED hearing officer must have the ability to enforce those requirements. Sanctions for failure to provide the requested information are required by federal law.

Section 48 amends MCA 40-5-227 and is not mandated by federal law, but is introduced at the CSED's initiative to reduce costs and provide for more timely and efficient enforcement of orders. When the department's administrative process was developed in the late 70's, administrative establishment and enforcement of paternity and support was uncommon. For that reason, in order to ensure that the department's administrative orders would be recognized by other states, the department filed an abstract or summary of the order with the district court and this section provide that upon filing, the order was effective as a district court order. Since that time, many, many states have moved to administrative processes as allowed and encouraged by federal law,

and administrative orders are recognized as valid without this filing with the district court. The federal Full Faith and Credit for Child Support Orders Act also provides that administrative orders are entitled to full faith and credit just as a court order would be. Therefore, it is no longer necessary to create and file abstracts of each administrative order with the district court. This provision will save the department time and will alleviate the clerks of court from this ministerial duty. This also makes sense because the CSED will become the ultimate record keeper for child support orders, and there is no need to continue to place this docketing burden on district courts for them to abstract the orders back to CSED for inclusion in the central registry.

Section 56 amends the department's process for registration of foreign support orders. These changes are not mandated by federal law but are designed to closely follow the registration of foreign order provisions of the Uniform Interstate Family Support Act at MCA 40-5-188 through 40-5-191, which provide for a hearing to contest the registration of a foreign support order.

Section 72 is not mandated by federal law but clarifies that the department may enforce a foreign support order under these provisions, without need to first register the foreign support order, since all the same defenses to the order may be raised in the income withholding action.

*** PLEASE NOTE: THERE ARE SOME MANDATED PROVISIONS IN SECTION 47.**

LEGISLATIVE AUDIT DIVISION

Scott A. Seacat, Legislative Auditor
John W. Northey, Legal Counsel
Tori Hunthausen, IT & Operations Manager



EXHIBIT 7
DATE 4/9/97
SB 374
Deputy Legislative Auditors:
Jim Pellegrini, Performance Audit
James Gillett, Financial-Compliance Audit

April 2, 1997

Representative Bob Keenan
Montana House of Representatives
Capitol Station
Helena MT 59620

Dear Representative Keenan:

We have completed the work you requested us to do concerning SB 374. Enclosed is a memorandum and attachment which summarize our observations. Please contact us if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott A. Seacat".
Scott A. Seacat
Legislative Auditor

VR/s/971-136.ltr

Enclosures

MEMORANDUM

To: Jim Gillett
Scott Seacat

From: Frieda Houser
Emy Neuman-Javornik
Vickie Rauser

Date: April 2, 1997

Re: Section by Section Analysis of SB 374 - 1st house, 2nd printing of 2nd reading - yellow copy (97L-136)

We were asked to analyze SB 374. We compared the sections of SB 374 to federal legislation used by DPHHS as the basis for most of the proposed statutory changes.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) is the federal welfare reform act. One of the basic premises of PRWORA is to encourage people to work and not become or remain dependent on public assistance. The federal program resulting from PRWORA is called Temporary Assistance for Needy Families (TANF). TANF is a grant program at the state level. It replaces AFDC which was an entitlement program at the recipient level.

The state must apply for a TANF grant. Part of the application process includes preparing a state plan which outlines the specifics concerning the state's public assistance intentions. The state plan must include a plan for Child Support Enforcement (CSE). PRWORA and the Uniform Interstate Family Support Act (UIFSA) require the state to enact certain provisions of law for the purposes of child support enforcement. These provisions then become part of the CSE state plan.

Several sections of SB 374 appear to go beyond what is required by PRWORA and UIFSA. Some of these sections contain procedures required by the federal acts. The state may have greater flexibility if the legislature sets the basic public policy and then requires DPHHS to promulgate rules to address the details. Other sections appear to violate the privacy of many to find the few (e.g. section 11 of the bill). These issues are addressed in the attached bill summary.

We identified PRWORA requirements which we could not find addressed in SB 374. These are 42 USC 666(a)(18) "Enforcement of orders against paternal or maternal grandparents" and 42 USC 666(d) "Exemption of States." The enforcement clause is a provision for enforcing a child support order against the parents of a noncustodial minor parent if the child is receiving assistance under the state program. The exemption clause provides that if a state can demonstrate to the satisfaction of the Secretary, through presentation of various data, that the enactment of any law or use of any procedure outlined in PRWORA will not increase the effectiveness and efficiency of the State child support enforcement program, the Secretary may exempt the State from the requirement to enact the law or use the procedure(s).

Other comments and observations are addressed in the attached bill summary. This memorandum and attached bill summary are intended to be read in conjunction with SB 374.

SUMMARY OF SB 374 ANALYSIS
1st House, 2nd Printing of 2nd Reading - Yellow Copy
(intended to be read in conjunction with the full text of SB 374)

Section 1. Definitions.

The definitions agree to federal legislation.

Section 2. Child support information and processing unit.

PRWORA requires the State disbursement unit use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical, for the collection and disbursement of support payments. (emphasis added). The justification for this section, prepared by the Department of Public Health and Human Services (DPHHS), does not address the underlined language above. Not addressing feasibility, efficiency, and economics may result in state laws which are more restrictive than needed.

Section 3. Case registry--abstracts--information required--mandatory updating.

Section 3 agrees to federal legislation.

Section 4. Registration procedures.

This section requires the clerk of court to deliver the completed abstract of support order and a copy of non IV-D income withholding order to DPHHS within 5 working days of receipt of an abstract or issuance of the non IV-D income-withholding order. PRWORA does not specify the level of detail this section proposes. The State is requiring additional information be provided by the clerks of court to the State. DPHHS states this will not be an additional reporting burden on the clerks of court because the department's intention is to combine the abstracts and non IV-D income withholding orders with the vital statistics required from section 50-15-302, MCA.

Section 50-15-302, MCA, statistics relate to dissolutions or declarations of invalidity of marriage; when the clerk of court receives the decree, the clerk is to complete a report to DPHHS. The department's analysis of this section of the bill does not address the issue of whether dissolution decrees, abstracts of support orders and/or non IV-D income withholding orders will be filed with the clerk of court in such a manner as to meet both the 5 day mandate in this bill section and the immediate reporting required in section 50-15-302, MCA. An amendment to section 50-15-302, MCA, may be necessary.

DPHHS is creating a section of law which allows the department to enter into cooperative agreements with the district courts, clerks of court, or other agencies of this or other states to gather and transmit the abstract and non IV-D withholding orders through electronic information networking systems.

Section 5. Centralized payment center--mandatory payments to center.

PRWORA requires the state case registry contain records for all Title IV-D cases and for all support orders issued or modified in the state after October 1, 1998. Section 5 creates a new law which requires payments due under a support order be paid through DPHHS under certain conditions. PRWORA [42 USC 666(b)(3)(A)(ii)] addresses two situations where income withholding is not required. These are: (1) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (2) a written agreement is reached between both parties which provides for an alternative arrangement. The current

language in section 5 does not address these situations.

Section 6. Distribution of payments.

PRWORA [42 USC 654(B)(c)] requires the state disbursement unit to distribute all amounts payable under section 657(a) within 2 business days after receipt from the employer or other source of periodic income, if sufficient information identifying the payee is provided. The only exception to this requirement is the state disbursement unit may delay the distribution of collections toward arrearages until the resolution of any timely appeal with respect to such arrearages. Section 6 does not include the 2 business day requirement; it states that support payments processed through the case processing unit must be "promptly" disbursed. The section goes on to list circumstances in which disbursement will not be timely. These circumstances are not listed in PRWORA but seem to be a reasonable business practice. Subsections 4 and 5 are not mentioned in PRWORA but seem to be a reasonable business practice.

Section 7. Monitor payments--enforcement.

The remedies for untimely support payments, as proposed in this section are concurrent with PRWORA.

Section 8. Certification of records.

PRWORA does not require this enactment of this statute. DPHHS states it is necessary for the operation of the federally required case registry and payment processing unit. As the department will be the repository of payment history and other documents, it must have the authority to provide copies of this information for legal proceedings. Subsection (3) of this section is at the request of a judicial district as a means of transmitting court documents to the department in an efficient manner.

Section 9. Directory of new hires--employer reporting requirements--penalties.

PRWORA states reporting of new hires by employers shall be the W-4 form or, at the option of the employer, an equivalent form. Subsection 1(b) adds the statement, "or any other format agreed to by the department." This language is not in PRWORA. In addition, Section 9(b) requires the report contain the date of hire and may include the employee's date of birth, neither one of which is required by federal regulations.

Subsection 1(c) is not required by PRWORA; it states the employer may include information about dependent health insurance coverage.

Subsection 4(c) is not in PRWORA. This subsection gives DPHHS the ability to collect an amount imposed as a penalty by any remedy available to the department for enforcement of child support obligations.

Section 10. Information and records--disclosure.

Agrees to federal legislation.

Section 11. Automated access to financial records -- Confidentiality -- no liability.

The bill, in this section, has several requirements that are not in the PRWORA. Below is a listing, by subsection, of the differences.

2(b). PRWORA does not specifically require the account number.

2(c). This subsection requires the financial institution to reply within 30 days of request for

financial information. PRWORA sets no specific time limit.

3. There is no specific language in PRWORA requiring DPHHS to complete the computer match within 30 days.

3(c,d,e). The information requested in these subsections, i.e. nature of the account, funds available, and taxes or penalties, is not specifically required under the PRWORA.

4. There are no specific requirements in PRWORA regarding amount available in an obligor's account.

6(a). This subsection would subject a financial institution to the contempt authority of DPHHS if the financial institution discloses to the obligor information relating to these data matches and subsequent liens. PRWORA provides protection to financial institutions for providing information to DPHHS. However, it does not have specific requirements regarding the disclosure of information to obligors by the financial institution.

PRWORA requires the financial institution to provide the obligor's recorded address. This section of the bill does not require the institution to provide such information to DPHHS.

This section of the bill provides for an alternative process for financial institutions which may not have the capacity to perform computer matching. The alternative would require the financial institution to provide DPHHS with a complete listing of **all depositors with the institution** (emphasis added) and DPHHS would then perform the data match. This download of information may violate SEC regulations or other rights to privacy.

Section 12. Order to seek employment.

PRWORA requires an obligor who is past due in child support to be subject to a payment plan. To meet the payment plan the obligor, if capable, must attempt to gain employment. This section of the bill is more specific than PRWORA requires. It also deals with under-employment. If an obligor claims under-employment as a cause for nonpayment, DPHHS would require the obligor to seek more gainful employment and report to the department on a weekly basis. PRWORA does not address under-employment.

Section 13. Income-withholding orders of another state -- employer compliance -- employer immunity -- penalties for noncompliance.

This section agrees with UIFSA requirements. This section also allows employers, if they wish, to contact DPHHS to ensure the withholding orders were issued by proper authorities.

Section 14. Execution or withholding for support obligation.

Overall this section complies with PRWORA requirements. This section includes all retirement systems, i.e. Public Employees' Retirement System, Municipal Police Officers' Retirement System, Game Wardens' Retirement System, Sheriffs' Retirement System, Judges' Retirement System, Highway Patrol Officers' Retirement System, Firefighters' Unified Retirement System, and the Volunteer Firefighters' Compensation Act. Section 15 of this bill addresses the Teachers' Retirement System.

This section, however, does not include the optional retirement plan offered by the University system

as a source for child support; section 20 of this bill does allow support payments to be withheld from these benefit payments. This section also does not include deferred compensation as a source for child support purposes. Deferred compensation appears to fit the definition of income under PRWORA.

Section 15. Execution or withholding for support obligation.

This section deals with the Teachers' Retirement System and complies with PRWORA requirements.

Section 16. Amending 19-2-1004. Exemption from taxes and legal process.

Section 17. Amending 19-18-612. Protection of benefits from legal process and taxation -- nonassignability.

Section 18. Amending 19-19-504. Protection of benefits from legal process and taxation.

Section 19. Amending 19-20-706. Exemption from taxation and legal process.

Section 20. Amending 19-21-212. Exemption from taxation, legal process, and assessments.

The changes to these sections specifically allow child support payments to be withheld from the benefits paid from the corresponding retirement systems. This is concurrent with the expanded definition of income in PRWORA.

Section 21. Amending 25-13-608. Property exempt without limitation -- exceptions.

This section makes it possible to withhold child support payments from disability income. This is concurrent with the definition of income in the PRWORA.

Section 22. Amending 37-1-307. Board Authority.

The changes to this section are based on PRWORA. Under this regulation a social security number is to be recorded with all occupational licenses.

Section 23. Amending 40-1-107. Form of application, license, marriage certificate, and consent.

The changes to this section are based on PRWORA requirements.

Section 24. Amending 40-4-105. Procedures -- commencement -- pleadings -- abolition of existing defenses.

The changes to this section are based on PRWORA. The words "if known" were amended in to the bill after its introduction.

Section 25. Amending 40-4-204. Child support -- orders to address health insurance -- withholding of child support.

According to DPHHS the PRWORA requirements are for all IV-D and non IV-D cases to be included in this registry. However, the specific language in PRWORA states only that the registry is to be used to "the extent feasible." There is no discussion from DPHHS concerning "extent feasible."

DPHHS states subsection (6)(a)(iii) is not a federal requirement but that the department must currently request this insurance information. The source of the mandatory request is not identified.

DPHHS also states subsection (8)(a) is not a new requirement. This section does not have basis in either UIFSA or PRWORA, but is an existing statute subject to amendment in this bill.

Except as noted in the preceding three paragraphs the amendments to this statute have basis in federal legislation.

Section 26. Amending 40-4-206. Payment of maintenance of support to court -- handling fee clerk.

The changes to this section are based on PRWORA.

Section 27. Amending 40-5-103. Definitions.

The proposed changes in this section match the requirements set forth in UIFSA.

Section 28. Amending 40-5-149. Continuing, exclusive jurisdiction.

Section 29. Amending 40-5-151. Recognition of child support orders.

DPHHS states these amendments are necessary because UIFSA must be adopted verbatim. The proposed amendments do not result in a verbatim adoption. However, the wording changes that have been made do not effect the meaning of the federal requirements.

Section 30. Amending 40-5-158. Proceedings under this part.

The changes noted in this section delete references to other statutes. The reason for these changes is not apparent.

Section 31. Amending 40-5-161. Duties of initiating tribunal.

Subsection (3) refers to a responding state that has not adopted UIFSA or "another law." UIFSA also allows for responding states to have adopted other "procedures." This subsection is more restrictive than UIFSA requirements.

Again, DPHHS states the amendments are necessary because UIFSA must be adopted verbatim, but the amendments do not result in verbatim adoption. However, the meaning of the federal requirements is not lost.

Section 32. Amending 40-5-162. Duties and powers of responding tribunal.

Section 33. Amending 40-5-163. Inappropriate tribunal.

Changes to these sections are concurrent with UIFSA requirements.

Section 34. Amending 40-5-164. Duties of support enforcement agency.

This proposed amendments in this section do not result in verbatim adoption of UIFSA. Subsection (2)(d) as written in the bill uses the term "promptly" when referring to the amount of time a support enforcement agency has to send notice to a petitioner. The language in UIFSA states that "within [two] days, exclusive of Saturdays, Sundays, and legal holidays, after receipt" the agency must send a copy of the notice to the petitioner. This same difference appears in subsection (2)(e) when referring to the use of the word "promptly." Other minor changes in the wording do concur with UIFSA requirements.

Section 35. Amending MCA 40-5-173. Costs and fees.

There are minor wording differences between this section and UIFSA. These differences do not appear to contradict the UIFSA requirements.

Section 36. Amending MCA 40-5-186. Effect of registration enforcement.

The proposed amendments strike the reference to sections 40-5-184 through 40-5-195, MCA. Unless there is a need to provide for flexibility in this section of law, this amendment may not be needed. DPHHS has not explained why this statute should be amended.

Section 37. Amending 40-5-188. Notice of registration of order.

Changes noted in this section concur with UIFSA requirements.

Section 38. Amending 40-5-189. Procedures to contest validity or enforcement of registered order.

Section 39. Amending 40-5-194. Modification of child support order of another state.

These sections are not verbatim from UIFSA. However, the differences do not change the meaning of the requirements.

Reference in subsection (1) of section 39 does not appear correct. An appropriate reference would be to a section titled "Jurisdiction to modify support order of another state when individual parties reside in this state." There is no such section in this bill; again resulting in UIFSA not being adopted verbatim.

Section 40. Amending 40-5-195. Recognition of order modified in another state.

Section 41. Amending 40-5-196. Proceeding to determine parentage.

These sections are not verbatim from UIFSA. However, the differences do not change the meaning of the requirements.

Section 42. Amending 40-5-201. Definitions.

This section is concurrent with federal legislation.

Section 43. Amending 40-5-203. Child support enforcement services.

This section is concurrent with federal legislation.

Section 44. Amending 40-5-206. Central unit for information and administration--cooperation enjoined--availability of records.

Subsection (2) is not clear on whether it applies to all entities in the State including for-profit, nonprofit, and governmental employers as required by PRWORA. Subsection (2) currently reads "all state, county, and city agencies, officers, and employees..."

Section 45. Amending 40-5-210. Standardized fee schedule--rules.

Amended language is concurrent with PRWORA.

Section 46. Amending 40-5-225. Notice of financial responsibility--temporary and final support obligations--administrative procedure.

Section 46 is not mandated by PRWORA. DPHHS proposed the amendments for efficiency purposes. Current state law provides for separate establishment of support orders and medical support orders; each requires a hearing. The proposed amendments provide for considering medical support orders at the same time the support order is being established; the obligation to pay for health insurance can impact a child support obligation.

Section 47. Amending 40-5-226. Administrative hearing--nature--place--time--determinations--failure to appear--entry of final decision and order.

PRWORA does not prescribe the level of detail included in section 47. For example, PRWORA does not require a hearing be made telephonically and it does not provide examples of sanctions.

PRWORA requires that parties to cases in which services are being provided under the State plan receive a copy of any order establishing or modifying a child support obligation, or (in the case of a

petition for modification) a notice of determination that there should be no change in the amount of the child support award within 14 days after issuance of the order or determination. The 14 day time limit is not addressed in this section of the bill.

Section 48. Amending 40-5-227. Filing and docketing of final orders--orders effective as district court decrees.

Section 48 is not mandated by PRWORA.

Section 49. Amending 40-5-232. Establishment of paternity--notice of parental responsibility--contents.

Section 49 changes the words "paternity determination" to "paternal responsibility." There is no basis in PRWORA for this change.

PRWORA language is not gender specific but section 49 terminology has been changed from "person" to "alleged father."

PRWORA requires notice of the ramification of voluntary paternity to be provided to the mother and father. Section 49 requires notice only be provided to the "alleged father."

Section 50. Amending 40-5-233. Establishment of paternity--administrative hearing--subpoena--compulsory blood testing.

The language added in this section is more specific than required by PRWORA. For example, subsection 2(b) states an initial hearing must be conducted by teleconferencing methods; teleconferencing is not required by PRWORA.

Section 51. Amending 40-5-235. Effect of order establishing paternity--birth records--relief from order.

Minor wording changes were made to this section. Revised language agrees with PRWORA.

Section 52. Amending 40-5-236. Referral of paternity issue to district court--record--parties--exclusion of other matters--fees.

Section 53. Amending 40-5-237. District court paternity proceedings--object to tests--additional tests--expert's report--admissibility of evidence.

Section 54. Amending 40-5-263. Central clearinghouse--interstate enforcement services--powers and duties of the department.

These sections agree to PRWORA.

Section 55. Amending 40-5-264. Cooperative Agreements.

Section 55 adds language allowing DPHHS to enter into cooperative agreements with any Indian tribe or tribal organization. However, PRWORA states cooperative agreements may be established with an Indian tribe or tribal organization if (emphasis added) such tribe or organization has an established tribal court system or a Court of Indian Offenses with the authority to establish paternity, establish, modify, and enforce support orders, and to enter support orders in accordance with child support guidelines. The criteria language is not included in the proposed amendments in this section.

Section 56. Amending 40-5-271. Registration of Support Orders.

This section incorporates UIFSA guidelines into state law. However, a verbatim adoption of UIFSA is not achieved. The defenses listed in subsection (2) includes only 1 of the 7 defenses listed in the

UIFSA that a contesting party can use to vacate an order. Those not listed in state law are:

- the order was obtained by fraud;
- the order has been vacated, suspended, or modified by a later order;
- the issuing tribunal has stayed the order pending appeal;
- there is a defense under the law of this State to the remedy sought;
- full or partial payment has been made; or
- the statute of limitation under section 604 (Choice of Law) precludes enforcement of some or all of the arrearages.

Subsection (3)(e) lists 7 defenses a contesting party may assert but they are different from the 7 defenses in UIFSA. Subsection (3)(e)(ii) contains a defense which UIFSA does not list. Subsection (3)(e) excludes a defense of full or partial payment which is listed in UIFSA.

Subsection (3)(h) states initial conferences must be conducted by teleconferencing methods. This is not required under PRWORA and the reasoning behind the addition of this language is not clear.

Section 57. Amending 40-5-274. Child support payment to follow the child.

Changes to this section conform to PRWORA requirements.

Section 58. Amending 40-5-302. Purpose--applicability.

Changes to this section conform to PRWORA requirements.

Section 59. Amending 40-5-303. Petition for income deduction--who may initiate.

This section is more specific than PRWORA in outlining procedures to follow but meets the requirements of the federal legislation.

Section 60. Amending 40-5-304. When child support payments considered delinquent.

This section provides for a specific numbers of days (7) after which a child support payment is considered delinquent. PRWORA does not specify a number of days; however, this appears to be a reasonable business practice.

Section 61. Amending 40-5-305. Notice.

Subsection (1) states, "A party initiating income deductions under this part shall serve the obligor with notice..." PRWORA requires "the State" to provide notice to the obligor.

Section 62. Amending 40-5-306. Discharge of delinquency.

Changes to this section conform to PRWORA requirements.

Section 63. Amending 40-5-307. Delinquency of child support denied--hearing.

Changes in this section are not mandated by federal legislation.

Section 64. Amending 40-5-308. Order for deduction from income for child support payments.

This section provides more specific procedures than are outlined in PRWORA. Federal regulations require the state have procedures; this section defines Montana's procedures and does not conflict with PRWORA.

Section 65. Amending 40-5-309. Amount to be deducted from income.

PRWORA states income withholding is limited by title 15 USC 1673(b). This section agrees to federal income withholding limits.

Section 66. Amending 40-5-310. Priority of income deduction.

Changes to this section conform to PRWORA requirements.

Section 67. Amending 40-5-312. Duties of payors.

In this section the word "employer" is struck and replaced with "payor." Section 1 of this bill defines both words as meaning the same thing. The amendment appears to be unnecessary.

Subsection (1) has a 14 day requirement. PRWORA has no specific time requirement.

DPHHS, in its analysis of this section, stated the 8 day time frame for remitting income withheld was intended to be 7 days to conform with the time frame required in 42 USC 666(b)(6)(A)(i).

Section 68. Amending 40-5-313. Obligor rights protected -- penalties.

Amendments are concurrent with PRWORA.

Section 69. Amending 40-5-314. Civil liability for failure to comply with wage deduction order.

This section of the bill states the payor is liable to the obligee. 42 USC 666(b)(6)(C) states the payor liability is to the State not the obligee.

Section 70. Amending 40-5-315. Immediate income deductions.

Subsection (3) is more specific than PRWORA. The section provides specific interpretation of PRWORA in the context.

Section 71. Amending 40-5-403. Definitions.

Amendments are concurrent with PRWORA.

Section 72. Amending 40-5-404. Other remedies available.

The changes made by this section are not mandated by PRWORA. The proposed amendments clarify the remedies available to DPHHS for enforcing support orders and specifically refer to the statute listing the defenses a contesting party has available.

Section 73. Amending 40-5-412. Delinquency income withholding.

Subsection (1)(b) contains a reference to an 8 day period in determining delinquency of support payments. There is no specific time limit set in PRWORA, but this time frame appears to be good business.

Section 74. Amending 40-5-413. Notice of intent to withhold income.

Amendments are concurrent with PRWORA.

Section 75. Amending 40-5-414. Hearing.

Amendments are concurrent with PRWORA. DPHHS stated, in its analysis of this bill, the State is **required** to have laws allowing for the execution of income withholding orders without providing notice to the obligor. PRWORA actually says the state **may** have such laws regarding withholding orders.

Section 76. Amending 40-5-421. Duties of payor.

Section 77. Amending 40-5-423. Priority of income withholding.

Section 78. Amending 40-5-443. Payors to provide information.

Amendments to these sections are concurrent with PRWORA.

Section 79. Amending 40-5-701. Definitions.

Since the legislature has approved the automated licensing system for the Department of Fish, Wildlife, and Parks, all recreational licenses could be subject to suspension. Under PRWORA there are no exceptions to the recreational license suspensions. For the State to comply with PRWORA all recreational licenses should be subject to suspension, not just those issued under a special drawing or auction.

Recreational licenses, as the bill is currently written, are the only licenses that cannot be reinstated upon satisfaction of the child support debt. All other licenses, i.e. professional licenses, driver's licenses, and motorcycle licenses, can be reinstated when the obligation has been satisfied. Recreational licenses are suspended until the next license year.

Section 80. Amending 40-5-702. Notice of intent to suspend license.

Amendments to this section are concurrent with PRWORA.

Section 81. Amending 40-5-703. Hearing -- order suspending license.

Amendments to this section are concurrent with PRWORA. However, this section does not define what a "year" is. It could be a license year, a calendar year, or a 12 month period beginning on the date of suspension.

Section 82. Amending 40-5-704. Suspension, denial, and renewal of licenses.

Section 83. Amending 40-5-709. Non disciplinary suspension for failure to pay child support.

Section 84. Amending 40-5-710. Stay of suspension of license -- payment plan -- hardship.

Amendments to these sections are concurrent with PRWORA.

Section 85. Amending 40-5-711. Termination of order to suspend license.

Subsection (3) goes beyond the PRWORA requirements. There appears to be no basis for the language in this section which expressly prohibits reinstating recreational licenses.

Section 86. Amending 40-6-102. Definitions.

Section 87. Amending 40-6-102. Definitions.

Section 88. Amending 40-6-111. Pretrial proceedings.

Section 89. Amending 40-6-115. Civil Action.

Section 90. Amending 40-6-116. Judgment or order.

Section 91. Amending 40-6-117. Enforcement of judgment or order.

Section 92. Amending 50-15-210. Paternity acknowledgment.

Amendments to these sections are concurrent with PRWORA.

Section 93. Amending 50-15-223. Certificates of birth following adoption, legitimation, or determination or acknowledgment of paternity.

Proposed amendments refer to "administrative agency in this state or another state with appropriate jurisdiction." "Administrative agency" is not defined and PRWORA uses the term "competent jurisdiction" rather than "appropriate jurisdiction."

Section 94. Amending 50-15-403. Preparation and filing of death or fetal death certificates.
Amendments are concurrent with PRWORA.

Section 95. Amending 53-2-613. Application for assistance-assignment of support rights.
Amendments are concurrent with PRWORA.

Section 96. Amending 61-5-107. Application for license, instruction permit, or motorcycle endorsement.
Amendments are concurrent with PRWORA.

Section 97. Amending 87-1-102. Penalties.
Amendments are not entirely concurrent with PRWORA.

The amendments provide for suspension of licenses by the "administrative authority." "Administrative authority" is not defined in federal statute, the state statutes, or Administrative Rules of Montana.

PRWORA does not distinguish which recreational licenses are subject to suspension. The proposed amendments address only certain licenses issued from central systems. With the legislative approval of an automated licensing system for Fish, Wildlife, and Parks, all categories of recreational licenses should be available for inclusion in these amendments.

Section 98. Amending 87-1-108. Suspension of privileges for failure to comply with citation or sentence.

See comments on Section 97 pertaining to "administrative authority."

Section 99. Amending 87-2-106. Application for license-penalties for violation-forfeiture of privileges.

Section 100. Amending 87-2-202. Application-stamp attachment-fee-expiration.
These sections were amended out of the bill version analyzed by DPHHS.

(New)Section 99. Codification instruction.

(New)Section 100. Severability.

(New)Section 101. Two-thirds vote required.

(New)Section 102. Retroactive applicability.

(New)Section 103. Effective Dates.

The requirements of these sections are appropriate given subject matter of the bill, state laws on "non-liability," and effective dates of PRWORA.

ALL EMPLOYERS TO REPORT ALL NEW HIRES

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 was signed into law on August 22, 1996.

- This legislation provides for a much strengthened Child Support Enforcement Program.
- The Child Support Program benefits children and families by locating noncustodial parents, establishing paternity when necessary, and establishing and enforcing child support orders.

One key provision of the PRWORA legislation of importance to employers is that all States have a program providing information about the newly hired. This new hire reporting program provides timely information so that child support can be more effectively enforced.

- Employers will be required to report certain information on their newly hired employees to a designated State agency.
- States will match new hire reports against child support records to locate parents, establish an order, or enforce an existing order. State agencies operating Employment Security and Workers' Compensation Programs will also have access to the new-hire information to detect and prevent erroneous benefit payments.

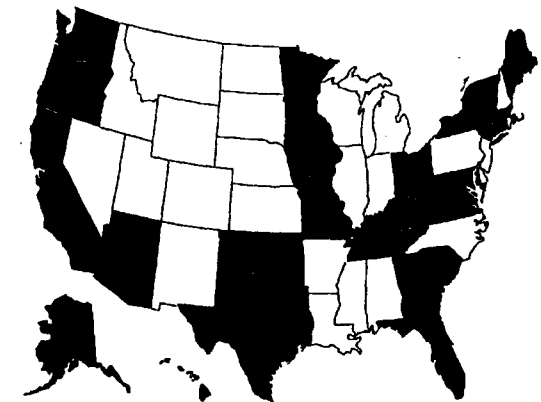
THE MINIMUM FEDERAL STANDARDS ESTABLISHED IN THE PRWORA ARE:

- All employers must report all new-hires.
- The new hire report must contain the name, address and social security number of the employee; and the name, address and Federal Employer Identification Number of the employer. It is extremely important that these reports be both accurate and legible, to ensure successful matching and contact once a match is made.
- New hires must be reported to the State within 20 days of the date of hire. If an employer reports electronically or by magnetic media, the employer must report by two monthly transmissions not less than 12 nor more than 16 days apart. States may establish more stringent reporting requirements.
- If an employer has employees in more than one State and reports either magnetically or electronically, that employer may designate one State (in which he/she has employees) to which all new hires may be reported. The employer must identify to the federal government the State which has been selected for reporting. A procedure to accomplish such selection will be provided to you at a later date.
- The new hire report shall be made on a W-4 form, or an equivalent form at the employer's option.
- New hire reports may be transmitted by first-class mail, by magnetic media, or electronically.

STATES WHICH CURRENTLY HAVE NEW HIRE LEGISLATION

Nearly half of the States already have new hire reporting legislation. **States already operating new hire programs** must conform their requirements to the minimum Federal requirements no later than October 1, 1998.

- If you live in a State which currently has new hire reporting, your State will notify you about changes in your procedures, if any, and when those changes will go into effect.
- States that already have New Hire Reporting Programs:



ALASKA	MISSOURI
ARIZONA	NEW YORK
CALIFORNIA	OHIO
CONNECTICUT	OKLAHOMA
FLORIDA	OREGON
GEORGIA	SOUTH CAROLINA
HAWAII	TENNESSEE
IOWA	TEXAS
KENTUCKY	VERMONT
MAINE	VIRGINIA
MARYLAND	WASHINGTON
MASSACHUSETTS	WEST VIRGINIA
MINNESOTA	

**STATES WITHOUT
NEW HIRE LEGISLATION
BEFORE AUGUST 22, 1996**

Those States not listed, as well as Guam, Puerto Rico, U.S. Virgin Islands and the District of Columbia, must have new hire programs in place no later than October 1, 1997. Again, your State will notify you regarding what your specific State requirements are and when they will go into effect.

INTERSTATE CASES

The Federal Office of Child Support Enforcement (OCSE) estimates that over 30% of child support cases involve parents who do not live in the same State as their children. Under PRWORA, the designated state agency will be required to transmit the new hire reports which they receive from employers to the Federal OCSE for entry into a National Directory of New Hires. Federal employers will report their new hires directly to the National Directory. This directory will operate to provide timely locate information to the States regarding child support cases.

**CENTRALIZED COLLECTION OF
WITHHELD INCOME**

The PRWORA legislation also requires that each State establish, by October 1, 1998, a State Disbursement Unit for the collection and distribution of all child support payments. Employers will be given **one location** within each State where all income withholding issued by a child support agency and all other orders issued after January 1, 1994, with certain exceptions, are to be sent.



With your help, millions of children have received the child support they need and deserve. The people responsible for operating the Child Support Enforcement Program thank you for the critical role you play in making this program successful. Almost two out of every three dollars collected by child support agencies come from income withholding. **This amounted to over \$6 billion in 1995.** Without your help, effective child support enforcement is impossible, and millions of our nation's children would suffer the consequences. With an effective new hire reporting system, millions more children will benefit.



**U.S. Department of Health and Human Services
Administration for Children and Families
Office of Child Support Enforcement
November 1996**

EXHIBIT 7A
DATE 4/9/97
SB 374

**INCREASING
FINANCIAL
SUPPORT
FOR OUR
NATION'S**



**The Personal Responsibility and
Work Opportunity
Reconciliation Act of 1996
(PRWORA)**

EXHIBIT 8
DATE 4/9/97
SB 374

COMMONWEALTH OF VIRGINIA v. RILEY
United State Court of Appeals-Fourth Circuit
No. 95-2627

Argued Dec. 4, 1996, Decided Feb. 5, 1997

Cited as Commonwealth v. Riley, 86 F. 3d 1337, 1347-1358 (4th Cir.1996)

Commonwealth of Virginia adopted a disciplinary policy discontinuing education of some unmanageable students. Fed. Government then threatened to cut off Federal funding of the program (\$60,000,000) unless these students were reinstated.

||

Court originally held for federal gov. but reversed (40 to 2) upon a rehearing adopting the dissenting opinions in the original holding, especially that of Judge Luttig.

The court held "In order for Congress to condition a state's receipt of federal funds, Congress must do so clearly and unambiguously. A substantial constitutional question under the Tenth Amendment would be presented" (if the original holding be sustained)

Judge Luttig states: "what I believe to be an unauthorized, if not unconstitutional, exercise of federal authority over matters peculiarly within the province of the States and reserved to them by the Tenth amendment to the Constitution"

"[the Court's] decisions have recognized that in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which 'pressure turns into compulsion-----in contradiction of the Tenth Amendment or of restrictions implicit in our federal form of government"

I would think that a Tenth Amendment claim of the highest order lies here, as here, the Federal Government---withholds the entirety of a substantial federal grant on the ground that the States refuse to fulfill their federal obligation in some insubstantial respect rather than submit to the policy dictates of Washington in a matter peculiarly within their powers as sovereign States. In such a circumstance, the argument as to coercion is much more than rhetoric; it is an argument of fact.-----"As such, it is an argument well-grounded in the Tenth Amendment's reservation" Cite as : 1997 WL 43493, *12 (4th cir.)

In regards to such expropriation (cut off of federal funding) it must be done in a manner that is faithful to the limitations on Federal power that there in the Tenth Amendment and in the principles of federalism that undergrid our entire democratic system of governance."

: a result of this holding, the Federal Government cannot withdraw funding wanted to a state unless the state has specifically violated a previously expressed non-ambiguous condition to which the original funding was subject. Withdrawal of federal funding in other areas, due to refusal of the States to comply with current or subsequent mandates conflicting with the 10th Amendment, would also be prohibited.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 4/9/97

9 AM

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH	<i>9:20</i> ✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

MONTANA HOUSE OF REPRESENTATIVES VISITORS REGISTER

HOUSE JUDICIARY COMMITTEE

DATE 4/9/97

BILL NO. SB.314

SPONSOR(S) Sen. Hargrove

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)
(PLEASE IDENTIFY TYPE OF VISITOR)

PLEASE PRINT

TYPE	NAME	ADDRESS	REPRESENTING
P	BETTY WADDELL	311 POWER	MT ASSOC. OF CHURCHES
P	MA Wellbank	DPHHS	DPHHS - CSED
P	Louise Ekanger	DPHHS	DPHHS
P	Governor Racicot	2nd Floor	self
P	Sharon Day	Box 1708	MT Catholic Cong
P	Hank Hubson	DPHHS	CFSD
very Rebellious P	David Owen	MT Chamber	→
O	SEN. LARRY BAER	DIST. 38	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Amendments to Senate Bill No. 374
Third Reading Copy

Requested by the Subcommittee
For the Committee on the Judiciary

Prepared by John MacMaster
April 10, 1997

1. Page 2, line 20.
Insert: "(3) "Delinquent obligor" means a person who owes a debt for child, spousal, or medical support as determined by the department or as specified by order of a tribunal of competent jurisdiction, the amount of which exceeds \$500 or a total of 3 months debt, whichever is less.
Renumber: subsequent subsections"
2. Page 5, line 7.
Strike: "returning"
Insert: "a rehired"
3. Page 6, line 14.
Strike: "ADEQUATELY PROVIDES FOR"
Insert: "maximizes"
4. Page 9, line 23.
Following: "obligation"
Insert: ", unless the payment is verified by the department to its satisfaction"
5. Page 12, line 23.
Strike: "accuracy"
Insert: "authenticity"
6. Page 12, line 26.
Strike: "--**penalties**"
7. Page 13, lines 19 through 25.
Strike: subsection (4) in its entirety
Renumber: subsequent subsection
8. Page 15, line 8.
Following: "ANY"
Insert: "STATE CREDIT UNION, AS DEFINED IN 32-3-102, OR"
Strike: "OR STATE CREDIT UNION"
9. Page 15, lines 13 through 15.
Strike: subsection (d) in its entirety
10. Page 15, lines 17 and 21.
Following: "list of"
Insert: "delinquent"
11. Page 15, line 21.

Following: "obligors."

Insert: "The department shall within 30 days use the list from the financial institution to run a computer match against the department's list of delinquent obligors."

12. Page 15, line 24.

Strike: "an"

Insert: "a delinquent"

13. Page 15, line 25.

Following: line 24

Insert: "delinquent"

14. Page 15, line 30 through line 1 of page 16.

Strike: "The" on line 30 of page 15 through "days." on line 1 of page 16

15. Page 16, line 1.

Strike: "A"

Insert: "If there is a"

Strike: "an"

Insert: "a delinquent"

Strike: "the"

16. Page 16, line 2.

Strike: "information from"

Insert: "a depositor"

Strike: "be compiled by"

Insert: "upon request of"

Strike: "and returned to the financial"

17. Page 16, line 3.

Strike: "institution for"

Insert: "provide"

Following: "information"

Insert: "within 30 days"

18. Page 16, line 4.

Following: "of the"

Insert: "delinquent"

19. Page 16, line 6.

Following: "by the"

Insert: "delinquent"

20. Page 16, lines 11, 16, and 18.

Strike: "an"

Insert: "a delinquent"

21. Page 18, line 5.

Following: "obligor"

Insert: "and, if the employer elects under subsection (3) to forward the funds to the department for distribution, to the department"

22. Page 18, line 12.

Strike: the second "and"

Insert: "the funds and either"

23. Page 18, line 13.

Following: "funds"

Insert: ", or forward the funds to the department to be distributed by the department,"

24. Page 25, line 3.

Following: "application."

Insert: "Each board must keep the social security number confidential, except that a board may provide the number to the department of public health and human services for use in administering child support laws."

25. Page 25, line 20.

Insert: "(3) The license, certificate, or consent may not contain the social security number, and the department must keep the number confidential, except that the department may use the number in administering child support laws."

26. Page 26, line 18.

Following: "matter."

Insert: "The recordkeeper must keep the social security number confidential, except that the number may be provided to the department of public health and human services for use in administering child support laws."

27. Page 29, line 3.

Insert: "(b) The court must keep the information provided under subsection (6)(a) confidential, except that the information may be provided to the department of public health and human services for use in administering child support laws."

Renumber: subsequent subsection

28. Page 30, line 3.

Insert: "(9) A judgment, decree, or order that establishes or modifies a child support obligation must include a provision that if a parent or guardian is the obligee under a child support order and is obligated to pay a contribution for the same child under 41-3-406, 41-5-403, or 41-5-523, the parent or guardian assigns and transfers to the department all rights that the parent or guardian may have to child support that are not otherwise assigned under 53-2-613."

29. Page 35, line 24.

Following: "~~40-5-179~~"

Insert: "under 40-5-179"

30. Page 35, line 28.

Following: "~~40-5-195~~"

Insert: "under 40-5-184 through 40-5-195"

31. Page 35, line 30.

Following: "~~40-5-150~~"

Insert: "under 40-5-147 through 40-5-150"

32. Page 36, line 2.

Following: "~~40-5-195~~"

Insert: "under 40-5-184 through 40-5-195"

33. Page 36, line 3.

Following: "~~40-5-196~~"

Insert: "under 40-5-196"

34. Page 36, line 23.

Following: "law"

Insert: "or procedure"

35. Page 39, line 13.

Strike: "this" through "registration"

Insert: "40-5-184 through 40-5-195"

36. Page 39, line 24.

Following: "provided"

Insert: "for"

Following: ", "

Insert: "including 40-5-184 through 40-5-195,"

37. Page 40, line 7.

Following: "~~of the~~"

Insert: "the date of mailing or personal service of the"

38. Page 41, line 4.

Strike: "[section 10]"

Insert: "subsection (5)"

39. Page 41, line 27.

Insert: "(5) (a) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this state exercising jurisdiction under subsection (5) (a) shall apply the provisions of 40-5-103 through 40-5-152, 40-5-181, and 40-5-184 through 40-5-195 to the enforcement or modification proceeding. The remaining sections of this part do not apply."

Renumber: subsequent subsections

40. Page 46, line 10.

Strike: "The"

Insert: "During or in anticipation of a delinquency, enforcement, or modification proceeding, or an attempt to locate an obligor, or a contested case, the"

41. Page 46, line 26.

Following: "agency"

Insert: "during or in anticipation of a delinquency, enforcement, or modification proceeding, an attempt to locate an obligor, or a contested case"

42. Page 51, line 26.

Strike: "obligor may seek a"

Insert: "obligee shall"

Strike: "from"

Insert: "to"

Strike: "obligee for"

Insert: "obligor"

Following: "any"

Insert: "improper"

43. Page 51, line 27.

Following: "order"

Insert: ", plus an costs the obligee incurs in recovering the amount to be refunded"

44. Page 53, line 25.

Following: "determination."

Insert: "However, the default order may not be for more than the support requested in the notice, unless the hearing officer finds that the evidence requires a larger amount."

45. Page 56, line 12.

Insert: "(c) The department must keep the information provided under subsection (12)(a) confidential."

46. Page 57, line 13.

Strike: "An"

Insert: "Before initiating a contempt proceeding, the department must give the alleged contemnor notice by personal service or certified mail of the alleged infraction and a reasonably opportunity to comply with the law and to cure the alleged infraction. In order to initiate a contempt proceeding, an"

47. Page 59, line 9.

Strike: "alleged father"

Insert: "parents"

48. Page 61, lines 21 and 22.

Strike: "and" on line 21 through "hearing" on line 22

49. Page 64, line 18.

Following: "department."

Insert: "The alleged father's advance payment must be returned to the alleged father if the test does not produce evidence of the alleged father's paternity."

50. Page 67, line 17.

Following: "notice"

Insert: "by personal service or certified mail"

51. Page 69, lines 4 and 5.

Strike: "and" on line 4 through "hearing" on line 5

52. Page 69, line 7.

Insert: "**Section 57.** Section 40-5-273, MCA, is amended to read:

"40-5-273. Administrative review of child support orders - modifying orders. (1) A review application setting forth facts meeting any of the criteria for review of a child support order established in 40-5-272 must be scheduled for an administrative hearing, and a hearings officer must be appointed by the department. Unless the hearings officer determines under rules of the department that an in-person hearing is necessary, the hearing must be conducted by telephone conference. The order scheduling the hearing must be served on the obligor and the obligee at least 60 days before the hearing. The order must include the following information as an exception to 2-4-601:

(a) the date and time for the hearing and, if appropriate, the place for the hearing;

(b) a statement of the purpose, objectives, and possible consequences of the review;

(c) a statement of the right of the obligor and the obligee to request the hearings officer to issue subpoenas compelling the appearance of witnesses and the production of documents for the hearing; and

(d) a requirement that the obligor and the obligee provide the hearings officer with telephone numbers at which they and their witnesses may be contacted for the hearing.

(2) The hearings officer may issue an order commanding the obligor or the obligee, or both, to produce financial information. The order must be personally served with the order scheduling the hearing. The hearings officer may also issue subpoenas ordering the department or other parties to produce information in their possession about the obligor and the obligee that may be reasonably necessary for application of the guidelines. Any information so obtained by the hearings officer must be provided to the department and other parties prior to the hearing.

(3) The requested modification of the order must be determined on the evidence submitted to the hearings officer under the following conditions:

(a) If an applicant other than the department fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered a withdrawal of the application.

(b) If a party other than the applicant fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered to mean that the party does not oppose the modification.

(c) If the department is the applicant and if either the obligor or the obligee, or both, fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered an admission that the party or parties do not oppose the modification.

(4) An order entered under the circumstances described in

subsection (3)(a), (3)(b), or (3)(c) becomes final within 10 days of issuance unless a party provides the hearings officer an affidavit showing good cause for failure to provide a telephone number or failure to be available for the hearing when telephoned.

(5) A provision of law may not be construed to mean that an obligor or an obligee is a client of the department, and the department is not considered a party to the action.

(6) (a) In addition to the powers and duties provided by other law, the hearings officer shall, to ensure the equitable determination of a support obligation, during a review hearing:

(i) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts;

(ii) introduce evidence on behalf of the parties;

(iii) apply the guidelines to the facts elicited from the hearing; and

(iv) inquire as to any circumstances that may require variance from the guidelines.

(b) If a party is represented by legal counsel, the hearings officer may allow the counsel to present that party's case.

(7) The hearings officer shall determine a support obligation in accordance with the guidelines and shall issue a modifying order. If the hearings officer determines that the difference between the existing support order and the amount determined under the guidelines is negligible under rules issued by the department, the modifying order may not change the amount of the support obligation. Even though the review may indicate that a modification of the support obligation is appropriate, the department may not modify the support order if the hearings officer determines, after the review hearing, that to do so would not be in the best interests of the child under the rules issued by the department. An increase in child support is presumed to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee demonstrates it would not be in the best interests of the child. The modifying order must prospectively modify the underlying support order from the date of service of the order scheduling the hearing and may modify the underlying order from the date found to be the date that the amount required for support decreased. The obligee may be ordered to repay the obligor for any support amount overpayment found to have been paid since the date that the amount required for support decreased. The department must, on request of the obligor, enforce the obligee's repayment of the overpaid amount, using any procedure provided in this chapter for payment, enforcement, and collection of child support or a delinquency.

(8) The hearings officer shall make a written determination whether health insurance is available to the child of the obligor through the obligor's employment or other group insurance. If the hearings officer determines health insurance is available to the child of the obligor, the hearings officer shall issue a modifying order that requires the obligor to obtain and keep health insurance for the child. If the hearings officer determines that health insurance is not available to the child of

the obligor, he shall issue a modifying order containing the notices provided in subsection (9). An order to provide health insurance is presumed to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee demonstrates it would not be in the best interests of the child.

(9) In addition to complying with other requirements of law, the modifying order must include the following notices and warnings:

(a) that the obligor shall keep the department informed of the name and address of his current employer and information on health insurance available to the obligor through the obligor's employment or other group insurance;

(b) that the obligor shall obtain and keep health insurance for the child of the obligor whenever it is available through the obligor's employment or other group insurance; and

(c) that the modifying order is subject to future administrative review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D.

(10) Orders entered under this section are final agency decisions, subject to judicial review pursuant to the Montana Administrative Procedure Act. All orders entered under this section must notify the parties that the order is subject to judicial review under Title 2, chapter 4, part 7.

(11) The parties to the support order and the department when it is providing services under IV-D may enforce the support order or modify that order independently, as provided in 40-4-208 and 53-2-613(4)(d)."

Renumber: subsequent sections

53. Page 70, lines 2 and 3.

Strike: "or" on line 2 through "entity" on line 3

54. Page 70, line 9.

Strike: "support beginning on the day"

Insert: "if"

55. Page 70, line 10.

Following: "support"

Insert: ", a person or entity referred to in subsection (2) notifies the obligor that income withholding will be initiated if the delinquent amount is not paid within 8 days of receipt of the notice, and the obligor does not pay the delinquent amount within that time. Notification that income withholding will be initiated if a delinquency is not paid within 8 days of receipt of the notice is not necessary if such a notice was given for a prior delinquency and the prior delinquency in fact existed."

56. Page 70, line 16.

Strike: "who" through "delinquent"

57. Page 70, line 17.

Strike: "A TEMPORARY"

Insert: "an"

Strike: "provided for in 40-5-308"

58. Page 72, lines 25 through 28.

Strike: subsection (1) in its entirety

59. Page 72, line 29

Strike: "(2)"

60. Page 72, line 30.

Following: line 29

Insert: "under 40-5-305"

Strike: "issuance"

61. Page 73, line 1.

Strike: "OR"

Following: "support"

Insert: "if there was a prior income deduction order for a
delinquency that in fact existed"

62. Page 73, line 9.

Strike: "take place"

Insert: "continue"

63. Page 73, line 21.

Following: "determines"

Insert: "that there was a prior income deduction order for a
delinquency that in fact existed or that"

64. Page 74, lines 19 through 21.

Strike: subsection (4) in its entirety

65. Page 76, line 13.

Strike: "under 40-5-308"

66. Page 76, line 14.

Strike: ", regardless" through "delinquency"

67. Page 77, line 3.

Strike: "provided for by 40-5-308"

68. Page 77, line 13.

Following: "If"

Insert: "a deduction order is not for the full amount of each
support payment, and"

Following: "occurs"

Insert: "in the amount of one or more payments that are not paid
by income withholding"

69. Page 79, line 26.

Following: "delinquent,"

Insert: "the department may notify the obligor that income
withholding will be initiated if the delinquent amount is
not paid within 8 days of receipt of the notice. If the
obligor does not pay the delinquent amount within that time,"

70. Page 79, line 27.

Following: "payor."

Insert: "Notification that income withholding will be initiated if a delinquency is not paid within 8 days of receipt of the notice is not necessary if such a notice was given for a prior delinquency and the prior delinquency in fact existed."

71. Page 80, line 24.

Strike: "**intent to withhold**"

Following: "**income**"

Insert: "**withholding**"

72. Page 81, line 24.

Strike: "intent to withhold"

Following: "income"

Insert: "withholding"

73. Page 83, line 4.

Following: "arrears"

Insert: "or if there was a prior order that is no longer in effect for a delinquency that in fact existed"

74. Page 83, lines 9 and 10.

Strike: "was served" on line 9 through "income" on line 10

Insert: "became delinquent"

75. Page 83, line 13.

Strike: "INTENT TO WITHHOLD"

Following: "INCOME"

Insert: "withholding"

76. Page 83, line 17.

Strike: "MUST TAKE PLACE"

Insert: "will continue"

77. Page 83, lines 21 and 22.

Strike: "intent" on line 21 through "withhold" on line 22

Insert: "income withholding"

78. Page 83, line 25.

Following: "order to"

Insert: "continue to"

79. Page 76, line 2.

Following: "who"

Insert: "purposely and"

80. Page 82, lines 6 and 7.

Strike: "OR" on line 6 through "hearing" on line 7

81. Page 85, line 15.

Insert: "(4) The requester must keep the information provided

under subsection (1) confidential."

82. Page 89, line 30.

Strike: "denying"

Insert: "making good faith efforts to deny"

83. Page 100, line 9.

Following: "matter."

Insert: "The recordkeeper must keep the social security number confidential, except that the number may be provided to the department of public health and human services for use in administering child support laws."

84. Page 106, line 15.

Insert: "(3) The department must keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering child support laws."

Renumber: subsequent subsection

85. Page 111, line 9.

Insert: "NEW SECTION. **Section 100. Report to the legislature.**

The department of public health and human services shall report to the regular session of the 56th legislature on progress toward resolving child support issues between the state, federal, and tribal governments.

Renumber: subsequent section

86. Page 111, line 21.

Insert: "NEW SECTION. **Section 102. Coordination instruction.**

If House Bill No. 168 is passed and approved and if it includes the words "or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing" or similar language in amendments to the following MCA sections, then that language is stricken from those sections:

17-4-105(4)(c)

40-5-189(1)

40-5-226(2)

40-5-414(3)

40-5-703(2)

40-5-824(5)

Renumber: subsequent sections

87. Page 112, lines 3 and 4.

Strike: section 102 in its entirety

Renumber: subsequent section

1 (g) In a proceeding for arrears, the statute of limitations under the laws of this state or of the issuing
2 state, whichever is longer, applies.

3 (h) Hearings under this subsection (3) are subject to the provisions of the Montana Administrative
4 Procedure Act and must initially be conducted by teleconferencing methods. At the request of a party and
5 upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the
6 hearings officer shall, at the close of a teleconference hearing, grant a de novo in-person hearing."

7
8 Section 57. Section 40-5-274, MCA, is amended to read:

9 "40-5-274. Child support payments to follow the child. (1) A support order issued or modified
10 under this part must contain a provision requiring the child support obligation to be paid to:

11 (a) the legal custodian of the minor child;

12 (b) ~~(i) any other person, organization, or agency having legal physical custody of the minor child~~
13 ~~or collecting child support on behalf of the minor child under a legal assignment of rights~~ a person,
14 organization, or agency to which the legal custodian voluntarily or involuntarily relinquishes physical
15 custody of the child; or

16 ~~(ii) the court for the benefit of the minor child;~~

17 (c) ~~any other person or agency designated as caretaker of the minor child by agreement of the legal~~
18 ~~custodian; or~~ to any other person, organization, or agency entitled by law, assignment, or similar reason
19 to receive or collect the child support obligation.

20 ~~(d) any assignee or other person, organization, or agency authorized to receive or collect child~~
21 ~~support.~~

22 (2) If the department is providing services under Title IV-D of the Social Security Act, payment of
23 support must be made through the department for distribution to the person, organization, or agency
24 entitled to the payment.

25 ~~(2)(3)~~ (3) An order that omits the provision required by subsection (1) is subject to the requirements
26 of subsection (1) without need for an amendment to the order or for any further action by the department."

27
28 Section 58. Section 40-5-302, MCA, is amended to read:

29 "40-5-302. Purpose -- applicability. (1) The purpose of this part is to provide a direct method of
30 deducting money from a person's income for the payment of child support ~~if that person has been~~

a person or entity referred to in subsection (2) notifies the obligor that income withholding will be initiated if the delinquent amount is not paid within 8 days, and the obligor does not pay delinquent in the payment of court ordered child support. ^{the delinquent amount within that time}

(2) Income withholding under this part is available without amendment of the support order or further action by a district court or other entity, even though the support order did not provide for withholding or provided for other payment arrangements.

You do need further action. For example, there's notice that you have to pay within 8 days.

Section 59. Section 40-5-303, MCA, is amended to read:

"40-5-303. Petition for income deduction -- who may initiate. (1) If an obligor is exempted from immediate income withholding under 40-5-315 or is not otherwise subject to an income-withholding order, the obligor's income may be withheld for the payment of child support ^{if} beginning on the day the obligor becomes delinquent in the payment of support."

(2) A petition for an income deduction ~~Income withholding~~ for the payment of delinquent child support payments may be made initiated by:

- (1)(a) the person named as the recipient of the child support payments in the child support order;
- (2)(b) the child or the guardian of the child named in the child support order; or
- (3)(c) the department of public health and human services.

(3) (a) At the request of an initiating party who determines that an obligor is delinquent, the clerk of DISTRICT court shall issue an A TEMPORARY order for income deductions provided for in 40-5-308 for immediate service upon the obligor's payor or payors. The order is limited to current support unless modified to include arrears as provided in 40-5-308.

(b) At the same time an income deduction order is issued, the requesting party shall notify the obligor as provided in 40-5-305 that income deductions have been initiated.

(4) Deductions under this section for current support may be terminated only if:

- (a) the district court determines after a hearing that the obligor was not delinquent when the deduction order was issued;
- (b) the obligation to pay support has terminated and all delinquencies are paid in full; or
- (c) the department of public health and human services has superseded the deduction order under authority of Title 40, chapter 5, part 4.

(5) As used in this part, the following definitions apply:

(a) "Employer" includes a payor.

(b) (i) "Income" means any form of periodic payment to a person, regardless of source, including

1 commissions, bonuses, workers' compensation, disability benefits, payments under a pension or retirement
2 program, interest and earnings, and wages.

3 (ii) Income does not include:

4 (A) an amount, other than creditor claims, required by law to be withheld, including federal, state,
5 and local taxes and social security; or

6 (B) an amount exempted from judgment, execution, or attachment by federal or state law.

7 (c) "Payor" means any entity that pays income to an obligor on a periodic basis and includes any
8 person, firm, corporation, association, employer, trustee, political subdivision, or state agency or an agent
9 of any one of them, subject to the jurisdiction of the courts of this state under Rule 4B of the Montana
10 Rules of Civil Procedure."

11

12 Section 60. Section 40-5-304, MCA, is amended to read:

13 "40-5-304. When child support payments considered delinquent. (1) Nonpayment of child support
14 required by any a district court or administrative order of a district court or by a similar order of a court of
15 another jurisdiction becomes delinquent under this part ~~when the amount owed is equal to 3 months of~~
16 ~~child support payments~~ 8 7 8 working days after the last day of the month in which the payment is due.

17 (2) Child support payments may be considered delinquent under this part only in reference to a
18 court or administrative order setting child support payments.

19 (3) ~~In the case of support orders not subject to immediate income withholding under 40-5-315,~~
20 ~~including cases in which the court or administrative authority has made a finding of good cause or~~
21 ~~alternative arrangement, the income of the obligor is subject to withholding under this part beginning on~~
22 ~~the date on which the obligor is found to be delinquent in the payment of support due under a support order~~
23 ~~in an amount equal to at least 3 months' support payments. Intervening agreements or orders establishing~~
24 ~~a schedule for payment of delinquent support do not prevent income withholding under this part. For the~~
25 ~~purposes of this section, "alternative arrangement" has the meaning provided in 40-5-315(3)(b)."~~

26

27 Section 61. Section 40-5-305, MCA, is amended to read:

28 "40-5-305. Notice. ~~On petition for income deductions for payment of delinquent child support,~~
29 ~~the district court shall cause notice to be served upon the obligor, stating that if the delinquency is not~~
30 ~~discharged within 15 days, the court will order an income deduction for the payment of the delinquent child~~

1 support and for the payment of current child support as it becomes due and payable. The notice shall also
 2 state that the obligor may contest the allegation that child support payments are delinquent.

3 (1) A party initiating income deductions under this part shall serve the obligor with notice if:

4 (a) an order for immediate income deductions is issued because of a delinquency;

5 (b) additional delinquencies accrued subsequent to the issuance of an income-deduction order and
 6 the requesting party proposes to add those delinquencies to an existing order for income deductions;

7 (c) immediate withholding under 40-5-315 or delinquency withholding under 40-5-303 has
 8 commenced for current support and there are delinquencies due for a period prior to issuance of the
 9 income-deduction order that the requesting party proposes to add to the deduction order; or

10 (d) the obligation to pay current support has terminated and there are support arrears still owing
 11 for the period prior to termination.

12 (2) The notice must contain a statement:

13 (a) of the amount subject to withholding, including a computation showing the period and total
 14 amount of the delinquency as of the date of the notice;

15 (b) that withholding applies to all current and subsequent payors;

16 (c) of the procedures to follow if the obligor desires to contest income withholding on the grounds
 17 that the initiation of withholding or the modification of an existing order for deductions is improper or that
 18 the amount to be deducted is in error due to a mistake of fact; and

19 (d) of the period of time within which the obligor is required to file a request for hearing and that
 20 failure to file the hearing request within the time limit will result in an income-deduction order being served
 21 upon the payor for the amount stated in the notice.

22 (3) The notice must be served upon the obligor personally or by certified mail."

23
 24 Section 62. Section 40-5-306, MCA, is amended to read:

25 "40-5-306. Discharge of delinquency. If (1) In a case in which only arrears are owed, if the
 26 obligor pays the total amount of child support due and payable in arrears within the 15 days after service
 27 of the notice specified in 40-5-305, an order for deduction may not issue. This discharge of delinquency
 28 does not affect or otherwise limit any action as a result of any subsequent delinquencies.

29 (2) If there is a current support obligation, payment of arrears after service of the order NOTICE
 30 OR AFTER SERVICE OF THE INCOME-DEDUCTION ORDER ON THE PAYOR does not prevent the issuance

Legislative
 Services
 Division

Delete "issuance". The
 order has already issued
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SB 374

How can there be a
 subsequent delinquency
 if "arrears only" means
 no future obligation?

Delete 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

*if there was a
prior income deduction
order*

(1) ~~or~~ CONTINUANCE of an income-deduction order for the payment of current support.

2

3

Section 63. Section 40-5-307, MCA, is amended to read:

4

5

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8

(9) withholding will take place.

10

11

Section 64. Section 40-5-308, MCA, is amended to read:

12

13

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19

20

(21) deduction order.

22

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30

(2) The order must state:

(a) the action involved;

(b) the total amount of back child support due and the amount of each court-ordered installment of child support;

(c) the amount to be deducted from the ~~wages or salary of the obligor each pay period~~ obligor's income and the amount, if any, allowed to the employer payor under 40-5-309(2) as a fee for handling the deduction;

(d) the length of time the order is to remain in effect, if ascertainable; and

1 (e) the name and address of the ~~clerk of court~~ person or entity to whom the deduction is to be paid
2 by the employer payor."

3
4 Section 65. Section 40-5-309, MCA, is amended to read:

5 "40-5-309. Amount to be deducted from income. (1) (a) The amount of money to be deducted
6 each pay period from the obligor's income is:

7 (i) (A) the amount of money necessary to pay current installments of child support as they become
8 due and payable; plus

9 (B) the amount of money that, when deducted in equal amounts each pay period, will pay off all
10 outstanding child support payments delinquent within 2 years; or

11 (ii) not less than 25% of the obligor's disposable earnings.

12 (b) If withholding is annualized, when deducted in equal amounts, the amount withheld each pay
13 period must be sufficient to pay all installments due in a 12-month period under the order to withhold.

14 (2) The district court may allow a fee of not to exceed \$5 per deduction, which the employer payor
15 may deduct from the obligor's ~~wages or salary~~ income for the expense of administering the deduction.

16 (3) The total amount to be deducted under subsections (1) and (2) may not exceed the maximum
17 amount permitted under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b), as
18 amended.

19 (4) Except as provided in 40-5-315, the child support income deduction must cease when there
20 is no past-due child support owing, unless the district court orders continued income deductions for
21 payment of child support installments as they become due and payable."

22
23 Section 66. Section 40-5-310, MCA, is amended to read:

24 "40-5-310. Priority of income deduction. An order for the deduction of income for the payment
25 of ~~delinquent~~ child support payments takes precedence over any:

26 (1) assignment of ~~wages or salary~~ income;

27 (2) voluntary deductions from the obligor's ~~wages or salary~~ income; and

28 (3) other court-ordered garnishment of ~~wages or salary~~ income."

29
30 Section 67. Section 40-5-312, MCA, is amended to read:

Delete subsec. (4). It's already in 306,
308 and 315

1 **"40-5-312. Duties of ~~employers~~ payors.** (1) ~~An employer~~ A payor who has been served with an
2 order for deduction under this part shall deduct the amount designated in the order beginning not later than
3 the first pay period that occurs after 14 days from the service of the order. The ~~employer~~ payor shall, within
4 ~~10~~ 7 working days of the date the obligor is paid, promptly pay the deducted amount as directed by the
5 order. The ~~employer~~ payor shall include with the payment a statement indicating the date the amount was
6 deducted from the obligor's ~~wages or salary~~ income.

7 (2) Whenever ~~an employer~~ a payor receives more than one ~~wage~~ deduction order from the same
8 district court, the ~~employer~~ payor may combine all amounts deducted into a single payment for that month,
9 with the portion that is attributable to each obligor separately designated.

10 (3) Whenever there is more than one deduction order against a single obligor the ~~employer~~ payor
11 shall:

12 (a) honor all ~~wage~~ deduction orders to the extent that the total amount deducted from the obligor's
13 ~~wages or salary~~ income does not exceed the limits set in 40-5-309; and

14 (b) comply with the orders in the sequence in which they were served upon the ~~employer~~ payor
15 except for ~~income withholding~~ income-withholding orders issued by the department of public health and
16 human services. Under 40-5-423, orders issued by the department have priority over all other orders
17 without regard to the sequence in which they were served.

18 (4) The ~~employer~~ payor shall promptly notify the clerk of the district court that issued the deduction
19 order of the termination of the obligor's employment and provide the obligor's last-known address and the
20 name and address of the obligor's new ~~employer~~ payor, if known."

21

22 **Section 68.** Section 40-5-313, MCA, is amended to read:

23 **"40-5-313. Obligor rights protected -- penalties.** (1) An employer may not discharge, discipline,
24 or refuse to hire a person because:

25 (a) the person has a child support obligation;

26 (b) a withholding order has been issued for the person's ~~wages or salary~~ income; or

27 (c) proceedings have been initiated under this part.

28 (2) An employer who violates the provisions of this section may be fined not more than \$100."

29

30 **Section 69.** Section 40-5-314, MCA, is amended to read:

1 **"40-5-314. Civil liability for failure to comply with wage deduction order.** (1) ~~An employer~~ A payor
2 who knowingly fails to deduct support money from the obligor's ~~wages or salary~~ income and remit the
3 money ~~to the district court~~ when ordered to do so under this part is liable to the obligee of the support
4 order for any amount up to the accumulated amount the ~~employer~~ payor should have deducted and
5 remitted.

6 (2) ~~An employer~~ A payor who complies with a deduction order under this part is not liable to the
7 obligor or to any other person claiming rights derived from the obligor for wrongful deductions."

8
9 **Section 70.** Section 40-5-315, MCA, is amended to read:

10 **"40-5-315. Immediate income deductions.** (1) Notwithstanding any provision in this part requiring
11 a delinquency as a prerequisite to an order for income deductions, except as provided in subsection (2),
12 the ~~salaries and wages~~ income of a person obligated to pay child support by an order of a district court
13 issued after October 1, 1991, ~~are~~ is subject to an immediate deduction order ~~under 40-5-308~~ on the
14 effective date of the order, ~~regardless of whether there is a delinquency.~~ ← repeats this

15 (2) An obligor's ~~salaries and wages are~~ income is not subject to deduction under this section in any
16 case in which the district court finds:

17 (a) that there is good cause not to require immediate deduction; or

18 (b) that there is an alternative arrangement between the parties for the payment of support that
19 provides sufficient security to ensure compliance with the arrangement.

20 (3) (a) For the purposes of subsection (2), a finding of good cause not to require immediate
21 deduction must, at a minimum, be based on:

22 (i) a written determination and explanation by the district court as to why implementation of
23 immediate deductions is not in the best interests of the child; and

24 (ii) in cases involving the modification of support orders, proof of timely payment of previously
25 ordered support.

26 (b) As used in subsection (2)(b), "alternative arrangement" means a written agreement that is
27 signed by the obligor and obligee and, in cases in which there is an assignment of support rights under
28 53-2-613, signed by the department of public health and human services, and that has been approved and
29 entered into the record by the district court that issued or modified the support order.

30 (4) The clerk of court shall administer immediate income deductions under this section. The clerk

1 of court, at any time after docketing the support order or modification of a support order, at the request
 2 of the obligee, and without need for amendment to the support order or for any further action by the district
 3 court, shall issue the order for income deductions ~~provided for by 40-5-305~~ for service upon the obligor's
 4 employer payer. The deduction order must direct the employer payer to promptly deliver the amount
 5 deducted to the ~~clerk of court~~ department of public health and human services as provided in [section 5]
 6 for distribution to the obligee.

7 (5) ~~Wage deductions~~ Deductions under this section may be terminated only when:

8 (a) the obligation to pay support has terminated and all arrearages are paid in full;

9 (b) the obligor requests termination and the obligee and obligor have entered into an alternative
 10 arrangement as set forth in subsection (2)(b); or

11 (c) the department of public health and human services has superseded the deduction order under
 12 authority of Title 40, chapter 5, part 4. *Makes no sense. Here, the delinquency is already under a*

13 (6) ~~If a delinquency occurs subsequent to issuance of an immediate deduction order or if arrearages~~
 14 occur prior to beginning the deductions, the arrearages may be added to the deduction order only after
 15 compliance with the notice of hearing requirements of 40-5-305.

16 (7) (a) After October 1, 1991, whenever a support order is registered as provided by 40-5-184 or
 17 other law, the support order is subject to immediate orders to deduct income under this section.

18 (b) Withholding income under this section must be imposed when an obligor has ~~wages or salaries~~
 19 income derived from within this state and the support order was issued in another state.

20 (8) This section applies only to support orders that are not being enforced by the department of
 21 public health and human services under Title IV-D of the Social Security Act. The withholding of income
 22 for support orders being enforced by the department is provided for in Title 40, chapter 5, part 4, and those
 23 procedures, if applicable, supersede the provisions of this section."
 24

25 **Section 71.** Section 40-5-403, MCA, is amended to read:

26 **"40-5-403. Definitions.** As used in this part, the following definitions apply:

27 (1) "Alternative arrangement" means a written agreement signed by the obligor and obligee, and
 28 signed by the department in the case of an assignment of rights under 53-2-613, that has been approved
 29 and entered in the record of the court or administrative authority issuing or modifying the support order.

30 (2) "Department" means the department of public health and human services provided for in

1 2-15-2201.

2 (3) "Employer" includes a payor.

3 ~~(3)(4)~~ "Income" means any form of periodic payment to a person, regardless of source, including
4 commissions, bonuses, workers' compensation, disability payments, payments under a pension or
5 retirement program, interest, and earnings and wages. However, income does not include:

6 (a) any amount required by law to be withheld, other than creditor claims, including federal, state,
7 and local taxes and social security; and

8 (b) any amounts exempted from judgment, execution, or attachment by federal or state law.

9 ~~(4)(5)~~ "Obligee" means either a person to whom a duty of support is owed or a public agency of
10 this or another state to which a person has assigned the right to receive current and accrued support
11 payments.

12 ~~(5)(6)~~ "Obligor" means a person who owes a duty to make payments under a support order.

13 ~~(6)(7)~~ "Payor" means any payor of income to an obligor on a periodic basis and includes any
14 person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent
15 thereof, who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules
16 of Civil Procedure.

17 ~~(7)(8)~~ "Support order" means an order of the district court of the state of Montana, an order of a
18 court of appropriate jurisdiction of another state, an administrative order established pursuant to
19 proceedings under part 2 of this chapter, or an order established by administrative hearing process of an
20 agency of another state with functions similar to those of the department set forth in part 2 of this chapter,
21 that provides a set and determinable amount for temporary or final periodic payment of funds for the
22 support of a child. Support order further includes the following:

23 (a) an order for reimbursement of public assistance money paid by a public agency for the benefit
24 of a minor child;

25 (b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial
26 parent of a child for whom child support is ~~awarded under the same order~~ collected under this chapter; and

27 (c) an order requiring payment of interest due on unpaid judgments for child support."
28

29 Section 72. Section 40-5-404, MCA, is amended to read:

30 "40-5-404. Other remedies available. (1) (a) The remedies provided in this part are in addition

the department may notify the obligor that income withholding will be initiated if the delinquent amount is not paid within 8 days. If the obligor does not pay the delinquent amount within that time,

to and not in substitution for any other remedy that may otherwise be available to the department, and the department may simultaneously pursue other remedies to enforce a support obligation or to collect support arrearages.

(b) If the department is enforcing a support order of another state, an Indian tribe, or a foreign country under this part, the department may proceed under Title 40, chapter 5, part 1.

(2) (a) The department may enforce a support order of another state, an Indian tribe, or a foreign country under this part without registration of the support order under 40-5-180, 40-5-271, or any other law providing for registration of support orders.

(b) If the department is enforcing an order under subsection (2)(a), in addition to those defenses available under this part, a party may contest the validity of the support order by proving any defense contained in 40-5-190."

Section 73. Section 40-5-412, MCA, is amended to read:

"40-5-412. Delinquency income withholding. (1) (a) In the case of support orders not subject to immediate income withholding under 40-5-411, including cases in which the court or administrative authority has made a finding of good cause or determines that an alternative arrangement exists, the income of the obligor is subject to withholding under this part beginning on the date on which the obligor is found to owe unpaid support under the support order in an amount equal to or in excess of 1 month's support payment day the obligor becomes delinquent in the payment of support. Intervening agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part.

(b) For purposes of this section, an obligor becomes delinquent 8 working days after the last day of the month in which the payment is due.

(c) Agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part.

(2) (a) If the department determines that an obligor is delinquent, the department may immediately send an order to withhold income to any payor. The order must be limited to current support unless modified to include arrears as provided in 40-5-413.

(b) At the same time an order to withhold income is sent to a payor, the department shall notify the obligor as provided in 40-5-413 that income withholding has been initiated.

1 ~~(2)(3)~~ Notwithstanding the provisions of subsection (1), income withholding must be initiated,
2 without regard to whether there is ~~an arrearage~~ a delinquency, on the earlier of:

- 3 (a) the date the obligor requests that withholding begin; or
4 (b) at the request of the obligee if the obligor is found, after an opportunity for hearing under
5 40-5-414, to be delinquent under the terms of an alternative arrangement for the payment of support.

6 ~~(3)(4)~~ To accomplish the purpose of subsection (1), the department shall monitor all support
7 payments not otherwise subject to immediate withholding. To facilitate monitoring, the department by
8 written notice to the obligor may direct an obligor ~~who does not owe unpaid child support equal to or in~~
9 ~~excess of 1 month's support payment~~ to pay all support through the department, notwithstanding a court
10 order directing payments to be made to the obligee or clerk of court.

11 ~~(4)(5)~~ The only basis for contesting withholding under this section is a mistake of fact, which
12 includes a mistake:

- 13 (a) concerning the obligor's identity;
14 (b) concerning the existence of the support obligation;
15 (c) concerning the amount of support to be paid;
16 (d) in the determination that the ~~delinquent support amounts owed are equal to or greater than 1~~
17 ~~month's support payment~~ obligor is delinquent in the payment of support;
18 (e) in computation of delinquent support amounts owed; or
19 (f) in the allegation that the obligor is in default of an alternative agreement.

20 (6) A mistake of fact under subsection (5) does not include mistakes relating to issues of paternity
21 or establishment of custody and visitation.

22 *It's not a notice of intent to withhold. In most cases, usually, withholding has already begun. See page 79, lines 26 & 27.*
23 Section 74. Section 40-5-413, MCA, is amended to read:
income withholding

24 "40-5-413. Notice of intent to withhold income. (1) Prior to service of an initial order or a
25 modification of an existing order on the payor under 40-5-415, the The department shall serve upon the
26 obligor with a notice of the intended action when if:

- 27 (a) income withholding is initiated under ~~40-5-412~~ because of a delinquency;
28 (b) additional arrearages ~~have~~ accrued subsequent to the issuance of an order to withhold and the
29 department proposes to add those arrearages to ~~the~~ an existing withholding order; or
30 (c) immediate withholding or delinquency withholding has commenced for current support and there

1 are arrearages due for a period prior to entry of the order to withhold that the department proposes to add
2 to the withholding order.

3 (2) The notice must contain a statement:

4 (a) of the amount ~~to be withheld~~ subject to withholding, including a computation showing the
5 period and total amount of the arrearages as of the date of the notice;

6 (b) that withholding applies to all current and subsequent payors;

7 (c) ~~of the obligor's right to a hearing under 40-5-414 to contest the initiation of income withholding~~
8 ~~or modification of an existing order on the ground that the intended action is not proper because of mistake~~
9 ~~of fact, as provided in 40-5-412(4) of the procedures to follow if the obligor desires to contest income~~
10 ~~withholding on the grounds that the initiation of withholding or the modification of an existing withholding~~
11 ~~order is improper or that the amount to be withheld is in error due to a mistake of fact, as provided in~~
12 ~~40-5-412;~~

13 (d) of the period of time within which the obligor ~~must~~ is required to file a request for a hearing and
14 that failure to file a request the hearing within the time limit will result in income withholding orders being
15 served upon the payor for the amount stated in the notice; and

16 (e) in those cases in which withholding is being initiated at the request of an obligee without regard
17 to whether there is an arrearage as provided in 40-5-412(2)(3), a statement that the obligor can require the
18 obligee to appear and show proof that the obligor is not meeting the terms of the alternative arrangement.

19 (3) The notice must be served upon the obligor personally or by certified mail."
20

21 Section 75. Section 40-5-414, MCA, is amended to read:

22 "40-5-414. Hearing. (1) (a) To contest the withholding of income initiated under 40-5-412 because
23 of a delinquency or the modification of an existing order to withhold, an obligor may within 10 days of
24 being served with notice of intent to withhold income ^{income withholding} under 40-5-413 file with the department a written
25 request for an administrative hearing to be held pursuant to the contested case provisions of Title 2,
26 chapter 4, part 6.

27 (b) The obligor shall include with the hearing request a statement of one or more of the grounds
28 for contesting income withholding provided in 40-5-412. If the hearing request fails to include that
29 statement, the hearings officer may deny the hearing for failure to state an issue upon which a hearing may
30 be granted.

1 (2) Venue for the administrative hearing may be in the county where the obligor resides if the
2 obligor resides in this state, the county in which the payor or the payor's agent is located, or the county
3 in which the department or any of its regional offices is located.

4 (3) The administrative hearing must initially be held by teleconferencing methods ~~unless the obligor~~
5 ~~or the department expressly requests an in-person hearing before the hearings examiner and is subject to~~
6 the Montana Administrative Procedure Act. At the request of a party and OR upon a showing that the
7 party's case was substantially prejudiced by lack of an in-person hearing, the hearings officer shall grant
8 a de novo in-person hearing.

9 (4) If the obligor ~~requests~~ files a timely request for a hearing; within the 10-day period;

10 ~~(a)(A)~~ that includes a statement showing a probable mistake of fact, the initiation of delinquency
11 income withholding by the department and the modification of an existing withholding order ~~must~~ may be
12 stayed upon written request of the obligor until conclusion of the hearing or the date of the hearing if the
13 obligor fails to appear at the scheduled hearing. However, ~~in a proceeding to initiate income withholding,~~
14 if the obligor is only contesting an arrearage amount and is not contesting withholding for current support,
15 income withholding for current support is not stayed. In a proceeding to modify an existing order, income
16 withholding under the existing order to withhold is not stayed.

17 ~~(b) the department shall, within 45 days of the service of the notice of intent to withhold income,~~
18 ~~inform the obligor of the hearing results concerning whether income withholding will take place.~~

19 (B) UNLESS GOOD CAUSE IS FOUND, THE DEPARTMENT SHALL, WITHIN 60 DAYS OF RECEIPT
20 OF A REQUEST FOR A HEARING, CONDUCT A HEARING. UNLESS GOOD CAUSE IS FOUND, WITHIN 60
21 DAYS AFTER A HEARING IS HELD, ANY POST-HEARING BRIEFS ARE RECEIVED, AND ALL EVIDENCE HAS
22 BEEN PROVIDED TO THE DEPARTMENT CONCERNING A NOTICE OF INTENT TO WITHHOLD INCOME,
23 THE DEPARTMENT SHALL INFORM THE OBLIGOR WHETHER INCOME WITHHOLDING MUST TAKE PLACE.

24 (5) The department ~~shall issue an order to~~ may continue an order to withhold income ~~issued~~
25 ~~because of a delinquency or a modified~~ may modify an existing order to withhold ~~in accordance with~~
26 ~~40-5-415 if:~~

27 (a) the obligor fails to file a timely written request for hearing ~~with the department within the~~
28 ~~specified 10-day period~~ that includes the statement showing a mistake of fact;

29 (b) the obligor fails to appear at a scheduled hearing;

30 (c) the hearings examiner determines from the evidence that the obligor ~~owes unpaid support equal~~

or if there was a prior order that is no longer in effect

1 ~~to or in excess of 1 month's support obligation and the amount of arrearages owing is determined and~~
2 ~~adjudged to be a fixed and certain sum is delinquent in the payment of support;~~

3 (d) there is an existing order to withhold and if the hearings examiner determines from the evidence
4 that the obligor owes new or additional amounts in arrears; or

5 (e) in cases in which income withholding is being initiated at the request of an obligee without
6 regard to whether there is an arrearage, the hearings examiner determines from the evidence that the
7 obligor did not meet the terms of the alternative arrangement.

8 (6) For purposes of the hearing process, arrearages of support must be computed on the basis of

9 the amount owed and unpaid on the date on which the obligor ~~was served with the notice of intent to~~
10 ~~withhold income.~~ ^{became delinquent} When the department is enforcing a current support obligation income withholding is

11 initiated because of a delinquency, payment of the arrearage after service of the notice or after service of
12 an order to withhold on a payor is not a basis for not initiating or continuing income withholding.

13 WHENEVER THE NOTICE OF INTENT TO WITHHOLD INCOME IS ISSUED BECAUSE AN ARREARAGE HAS ^{withholding}

14 ACCRUED OR ADDITIONAL INCOME IS BEING WITHHELD TO SATISFY ADDITIONAL ARREARAGES,

15 UNLESS GOOD CAUSE IS FOUND, WITHIN 60 DAYS AFTER A HEARING IS HELD, ANY POST-HEARING

16 BRIEFS ARE RECEIVED, AND ALL EVIDENCE HAS BEEN PROVIDED, THE DEPARTMENT SHALL INFORM

17 THE OBLIGOR WHETHER INCOME WITHHOLDING MUST TAKE PLACE. ^{will continue}

18 ~~(7) In a case initiated because an arrearage has accrued or because additional income is being~~

19 ~~withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to~~

20 ~~withhold income, must be informed of the hearing decision on whether income withholding will take place.~~

21 ~~(8)(7) If the obligor fails to request a hearing within 10 days after service of the notice of intent~~

22 ~~to withhold~~ ^{income withholding} or fails to appear at a scheduled hearing or if the hearings examiner determines that the obligor

23 ~~owes a combination of unpaid support equal to or in excess of 1 month's support obligation~~ unpaid support

24 or determines that a modification of an existing order is proper, the department shall ~~proceed with the~~

25 ~~intended action~~ ^{continue to} issue an order to withhold income in accordance with 40-5-415."

26

27 Section 76. Section 40-5-421, MCA, is amended to read:

28 "40-5-421. Duties of payor. (1) A payor who has been served with an order to withhold and

29 deliver income shall deduct the amount designated in the order beginning not later than the first pay period

30 that occurs after ~~14 days from the~~ service of the order. The payor shall, within ~~40~~ 7 working days of the

1 date the obligor is paid, promptly deliver the amount withheld to the department as directed by the order
2 or in accordance with any subsequent modification of the order received from the department. The payor
3 shall include with the payment a statement indicating the date the amount was withheld from the obligor's
4 income.

5 (2) Whenever the payor is obligated to withhold income for more than one obligor, the payor may
6 combine all amounts withheld into a single payment for that month with the portion ~~thereof which~~ of the
7 withholding that is attributable to each obligor separately designated.

8 (3) Whenever there is more than one order for withholding against a single obligor, the payor ~~must~~
9 shall comply with the orders in the sequence in which they were served upon the payor and ~~must~~ shall
10 honor all withholding orders to the extent that the total amount withheld from the obligor's wages or salary
11 does not exceed the limits set in 40-5-416.

12 (4) The payor ~~must~~ shall promptly notify the department of the termination of the obligor's
13 employment or other source of income and provide the obligor's last-known address and the name and
14 address of the obligor's new employer or other source of income, if known to the payor."

15
16 **Section 77.** Section 40-5-423, MCA, is amended to read:

17 "40-5-423. **Priority of income withholding.** An order to withhold and deliver income under this part
18 takes priority over any:

19 (1) wage or income deduction order under any other state law and any income-withholding order
20 issued in another state and sent to a payor in this state;

21 (2) voluntary or involuntary assignment of wages;

22 (3) other voluntary deductions from the obligor's income;

23 (4) levies, writs of execution, or garnishments of the obligor's income; and

24 (5) any other claims by creditors."

25
26 **Section 78.** Section 40-5-443, MCA, is amended to read:

27 "40-5-443. **Payors to provide information -- exemption from liability.** (1) For the purposes of this
28 part, upon written request by the department or by another IV-D agency, a payor or former payor and any
29 labor union of which the obligor or obligee is or may have been a member shall provide the ~~department~~
30 requester with the following information, if known, regarding the obligor or obligee:

- 1 (a) last-known residential address;
- 2 (b) social security number;
- 3 (c) dates of employment or union membership;
- 4 (d) amounts of wages, salaries, commissions, contract proceeds, and other earnings or amounts
- 5 paid;
- 6 (e) whether health insurance coverage is or was available through the payor or union and, if so:
- 7 (i) the name of the insurer or health care provider;
- 8 (ii) the policy numbers or other identifiers; and
- 9 (iii) the persons covered; and
- 10 (f) names, telephone numbers, and addresses of current and former employers, payors, and unions.

11 (2) A payor or labor union that discloses information ~~to the department~~ in compliance with this
12 section is exempt from any liability to the obligor or obligee that may result from the disclosure.

13 (3) Failure to disclose information in compliance with this section subjects the payor or labor union
14 to the sanctions provided in 40-5-226."

15
16 Section 79. Section 40-5-701, MCA, is amended to read:

17 "40-5-701. Definitions. As used in this part, the following definitions apply:

18 (1) (a) "Child" means:

19 (i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member
20 of the armed forces of the United States;

21 (ii) a person under 19 years of age who is still in high school;

22 (iii) a person who is mentally or physically incapacitated when the incapacity began prior to that
23 person reaching 18 years of age; and

24 (iv) in IV-D cases, a person for whom:

25 (A) support rights are assigned under 53-2-613;

26 (B) a public assistance payment has been made;

27 (C) the department is providing support enforcement services under 40-5-203; or

28 (D) the department has received a referral for interstate services from an agency of another state
29 under the provisions of the Uniform Interstate Family Support Act, the Revised Uniform Reciprocal
30 Enforcement of Support Act, the Uniform Reciprocal Enforcement of Support Act, or under Title IV-D of

1 the Social Security Act.

2 (b) The term may not be construed to limit the ability of the department to enforce a support order
3 according to its terms when the order provides for support extending beyond the time the child reaches 18
4 years of age.

5 (2) "Delinquency" means a support debt or support obligation due under a support order in an
6 amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent
7 to suspend a license.

8 (3) "Department" means the department of public health and human services.

9 (4) "IV-D case" means a case in which the department is providing support enforcement services
10 as a result of:

11 (a) an assignment of support rights under 53-2-613;

12 (b) a payment of public assistance;

13 (c) an application for support enforcement services under 40-5-203; or

14 (d) a referral for interstate services from an agency of another state under the provisions of the
15 Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support
16 Act, the Uniform Interstate Family Support Act, or under Title IV-D of the Social Security Act.

17 (5) "License" means a license, certificate, registration, permit, or any other authorization issued
18 by an agency of the state of Montana granting a person a right or privilege to engage in a business,
19 occupation, ~~or~~ profession, recreational activity, or any other privilege that is subject to suspension,
20 revocation, forfeiture, ~~or~~ termination, or a declaration of ineligibility to purchase by the licensing authority
21 prior to its date of expiration.

22 (6) "Licensing authority" means any department, division, board, agency, or instrumentality of this
23 state that issues a license.

24 (7) "Obligee" means:

25 (a) a person to whom a support debt or support obligation is owed; or

26 (b) a public agency of this or another state that has the right to receive current or accrued support
27 payments or that is providing support enforcement services under this chapter.

28 (8) "Obligor" means a person who owes a duty of support or who is subject to a subpoena or
29 warrant in a paternity or child support proceeding.

30 (9) "Order suspending a license" means an order issued by a support enforcement entity to

EXHIBIT 2
DATE 4/14
SB 374

Amendments to SB 374, Third Reading Copy
Drafted by Child Support Enforcement Division
Department of Public Health and Human Services

1. Page 57, line 13.
Following: "(15)"
Strike: "An"
Insert: "In order to initiate a contempt proceeding, an"
2. Page 57, following line 12
Insert: "(15) Before initiation of a contempt proceeding, the department must first provide the alleged contemnor written notice of the alleged infraction and a reasonable opportunity to come into compliance. The notice must be served personally or by certified mail."
3. Page 89, line 30.
Following: "(d)"
Strike: "denying"
Insert: "Make good faith efforts to deny"

EXHIBIT 3
DATE 4/14/97
SB 374

Amendments to Senate Bill No. 374
Third Reading Copy

Requested by the Subcommittee
For the Committee on the Judiciary

Prepared by John MacMaster
April 9, 1997

1. Title, line 28.

Strike: the second "AND"

Insert: ", "

Following: "DATE"

Insert: ", AND A CONTINGENT TERMINATION DATE"

2. Page 112, line 10.

Insert: "NEW SECTION. **Section 104. Termination--request for federal exemptions.** (1) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted this state an exemption from one of the following provisions, the provision terminates on the date the exemption takes effect:

(a) [section];

(b) [section].

(2) The department of public health and human services shall do everything in its power to obtain as soon as possible federal government exemptions from the provisions listed in subsection (1)."

SUBCOMMITTEE ON SB 374

DATE 4/14/97

[illegible]

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on April 14, 1997, at
5 PM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Chris Ahner (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Executive Action: SB 374, BE CONCURRED IN AS
AMENDED
SB 110, TO RECONSIDER, FAILED

EXECUTIVE ACTION ON SB 374

Amendments: John MacMaster explained the subcommittee EXHIBIT 1 amendments. {Tape: 1; Side: A; Approx. Time Count: 2.0; Comments: This set of minutes is recorded on three 60-minute tapes.}

Motion: REP. McGEE moved SB 374 BE CONCURRED IN.
{Tape: 1; Side: A; Approx. Time Count: 6.5}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 7.3-18.6}

Motion: REP. McGEE moved the subcommittee amendments.
{Tape: 1; Side: A; Approx. Time Count: 18.7}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 18.9-26.3}

Vote: The motion carried 19 - 0.

Motion: REP. McGEE moved SB 374 BE CONCURRED IN AS AMENDED.
{Tape: 1; Side: A; Approx. Time Count: 27.2}

Motion: REP. BOHARSKI moved a conceptual amendment as a legislative findings and purpose clause to say that "where the legislature finds that it had done its best to comply with 42USC666; however, the constitutional oath to uphold article 2, sections 10, 11 and 26 of the Montana Constitution prevented us from complying with all of the provisions of this act and therefore the sections dealing with new hire reporting, the financial institution data match and the social security requirement on all license applications were amended out."
{Tape: 1; Side: A; Approx. Time Count: 27.6-Tape 1; Side B; 2.9}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 3.1-Tape 2; Side A; 9.0}

Vote: The motion failed by voice vote.
{Tape: 2; Side: A; Approx. Time Count: 9.3}

Discussion:
{Tape: 2; Side: A; Approx. Time Count: 9.5-14.5}

Motion: REP. MOLNAR moved to amend SB 374 with a conceptual amendment requiring the Attorney General to seek a court finding regarding this bill's potential to violate the 10th amendment of the Montana Constitution.
{Tape: 2; Side: A; Approx. Time Count: 14.7.}

Discussion:
{Tape: 2; Side: A; Approx. Time Count: 15.8}

Vote: The motion failed 7 - 10; REPS. MOLNAR, BERGMAN, McGEE, BOHARSKI, GRIMES, CURTISS and CLARK voting aye.
{Tape: 2; Side: A; Approx. Time Count: 16.6}

Discussion:
{Tape: 2; Side: A; Approx. Time Count: 17.5-21.9}

Vote: The motion to concur in SB 374 as amended failed 6 - 14 by roll call vote. EXHIBIT 2

Motion: REP. BOHARSKI moved amend out of the bill all new hire, financial reporting, and social security number information and the no jury provisions.

{Tape: 2; Side: A; Approx. Time Count: 23 Comments: The Chairman noted that the bill had already been defeated and REP. BOHARSKI withdrew his motion.}

Motion: REP. BOHARSKI moved SB 374 BE CONCURRED IN and the above-mentioned amendment.

{Tape: 2; Side: A; Approx. Time Count: 24; Comments: It was noted that the proper motion would be to reconsider. REP. BOHARSKI withdrew his motion.}

Motion/Vote: REP. BOHARSKI moved to reconsider the bill for purposes of amendment. The motion carried by voice vote.

{Tape: 2; Side: A; Approx. Time Count: 27.6}

Motion: REP. BOHARSKI moved his amendment.

{Tape: 2; Side: A; Approx. Time Count: 28.9}

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 19.0-Tape 2; Side B; 0.1}

Vote: The motion to amend carried 13 - 6. REPS. WYATT, SANDS, MC CULLOCH, PEASE, HURDLE and KOTTEL voting no.

Motion/Vote: REP. MOLNAR moved to table SB 374 as amended. The motion failed by voice vote.

Motion/Vote: REP. BOHARSKI moved SB 374 BE CONCURRED IN AS AMENDED. The motion carried 11 - 9 by roll call vote. EXHIBIT 3

{Tape: 2; Side: B; Approx. Time Count: 1.3}

EXECUTIVE ACTION ON SB 110

Motion: REP. SMITH moved to reconsider SB 110.

{Tape: 2; Side: B; Approx. Time Count: 3.7}

Discussion:

{Tape: 2; Side: B; Approx. Time Count: 4.8}

Vote: The motion carried 12 - 8 by roll call vote.

EXHIBIT 4

{Tape: 2; Side: B; Approx. Time Count: 7.8}

Discussion:

EXHIBIT 5

{Tape: 2; Side: B; Approx. Time Count: 7.9}

Motion: REP. SMITH moved the amendments (Exhibit 5).

{Tape: 2; Side: B; Approx. Time Count: 9.5}

Amendments to Senate Bill No. 374
Third Reading Copy

Requested by the Subcommittee
For the Committee on the Judiciary

Prepared by John MacMaster
April 10, 1997

1. Page 2, line 20.
Insert: "(3) 'Delinquent obligor' means a person who owes a debt for child, spousal, or medical support as determined by the department or as specified by order of a tribunal of competent jurisdiction, the amount of which exceeds \$500 or a total of 3 months debt, whichever is less."
Renumber: subsequent subsections"
2. Page 5, line 7.
Strike: "returning"
Insert: "a rehired"
3. Page 6, line 14.
Strike: "ADEQUATELY PROVIDES FOR"
Insert: "maximizes"
4. Page 9, line 23.
Following: "obligation"
Insert: ", unless the payment is verified by the department to its satisfaction"
5. Page 12, line 23.
Strike: "accuracy"
Insert: "authenticity"
6. Page 12, line 26.
Strike: "--penalties"
7. Page 13, lines 19 through 25.
Strike: subsection (4) in its entirety
Renumber: subsequent subsection
8. Page 15, line 8.
Following: "ANY"
Insert: "STATE CREDIT UNION, AS DEFINED IN 32-3-102, OR"
Strike: "OR STATE CREDIT UNION"
9. Page 15, lines 13 through 15.
Strike: subsection (d) in its entirety
10. Page 15, lines 17 and 21.
Following: "list of"
Insert: "delinquent"
11. Page 15, line 21.

Following: "obligors."

Insert: "The department shall within 30 days use the list from the financial institution to run a computer match against the department's list of delinquent obligors."

12. Page 15, line 24.

Strike: "an"

Insert: "a delinquent"

13. Page 15, line 25.

Following: line 24

Insert: "delinquent"

14. Page 15, line 30 through line 1 of page 16.

Strike: "The" on line 30 of page 15 through "days." on line 1 of page 16

15. Page 16, line 1.

Strike: "A"

Insert: "If there is a"

Strike: "an"

Insert: "a delinquent"

Strike: "the"

16. Page 16, line 2.

Strike: "information from"

Insert: "a depositor"

Strike: "be compiled by"

Insert: "upon request of"

Strike: "and returned to the financial"

17. Page 16, line 3.

Strike: "institution for"

Insert: "provide"

Following: "information"

Insert: "within 30 days"

18. Page 16, line 4.

Following: "of the"

Insert: "delinquent"

19. Page 16, line 6.

Following: "by the"

Insert: "delinquent"

20. Page 16, lines 11, 16, and 18.

Strike: "an"

Insert: "a delinquent"

21. Page 18, line 5.

Following: "obligor"

Insert: "and, if the employer elects under subsection (3) to forward the funds to the department for distribution, to the department"

22. Page 18, line 12.
Strike: the second "and"
Insert: "the funds and either"

23. Page 18, line 13.
Following: "funds"
Insert: ", or forward the funds to the department to be distributed by the department,"

24. Page 25, line 3.
Following: "application."
Insert: "Each board must keep the social security number confidential, except that a board may provide the number to the department of public health and human services for use in administering child support laws."

25. Page 25, line 20.
Insert: "(3) The license, certificate, or consent may not contain the social security number, and the department must keep the number confidential, except that the department may use the number in administering child support laws."

26. Page 26, line 18.
Following: "matter."
Insert: "The recordkeeper must keep the social security number confidential, except that the number may be provided to the department of public health and human services for use in administering child support laws."

27. Page 29, line 3.
Insert: "(b) The court must keep the information provided under subsection (6)(a) confidential, except that the information may be provided to the department of public health and human services for use in administering child support laws."
Renumber: subsequent subsection

28. Page 30, line 3.
Insert: "(9) A judgment, decree, or order that establishes or modifies a child support obligation must include a provision that if a parent or guardian is the obligee under a child support order and is obligated to pay a contribution for the same child under 41-3-406, 41-5-403, or 41-5-523, the parent or guardian assigns and transfers to the department all rights that the parent or guardian may have to child support that are not otherwise assigned under 53-2-613."

29. Page 35, line 24.
Following: "~~40-5-179~~"
Insert: "under 40-5-179"

30. Page 35, line 28.
Following: "~~40-5-195~~"
Insert: "under 40-5-184 through 40-5-195"

31. Page 35, line 30.
Following: "~~40-5-150~~"
Insert: "under 40-5-147 through 40-5-150"
32. Page 36, line 2.
Following: "~~40-5-195~~"
Insert: "under 40-5-184 through 40-5-195"
33. Page 36, line 3.
Following: "~~40-5-196~~"
Insert: "under 40-5-196"
34. Page 36, line 23.
Following: "law"
Insert: "or procedure"
35. Page 39, line 13.
Strike: "~~this~~" through "registration"
Insert: "40-5-184 through 40-5-195"
36. Page 39, line 24.
Following: "provided"
Insert: "for"
Following: ", "
Insert: "including 40-5-184 through 40-5-195,"
37. Page 40, line 7.
Following: "~~of the~~"
Insert: "the date of mailing or personal service of the"
38. Page 41, line 4.
Strike: "[section 10]"
Insert: "subsection (5)"
39. Page 41, line 27.
Insert: "(5)(a) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and modify the issuing state's child support order in a proceeding to register that order.
(b) A tribunal of this state exercising jurisdiction under subsection (5)(a) shall apply the provisions of 40-5-103 through 40-5-152, 40-5-181, and 40-5-184 through 40-5-195 to the enforcement or modification proceeding. The remaining sections of this part do not apply."
Renumber: subsequent subsections
40. Page 46, line 10.
Strike: "The"
Insert: "During or in anticipation of a delinquency, enforcement, or modification proceeding, or an attempt to locate an obligor, or a contested case, the"
41. Page 46, line 26.
Following: "agency"

Insert: "during or in anticipation of a delinquency, enforcement,
or modification proceeding, an attempt to locate an obligor,
or a contested case"

42. Page 51, line 26.

Strike: "obligor may seek a"

Insert: "obligee shall"

Strike: "from"

Insert: "to"

Strike: "obligee for"

Insert: "obligor"

Following: "any"

Insert: "improper"

43. Page 51, line 27.

Following: "order"

Insert: ", plus an costs the obligee incurs in recovering the
amount to be refunded"

44. Page 53, line 25.

Following: "determination."

Insert: "However, the default order may not be for more than the
support requested in the notice, unless the hearing officer
finds that the evidence requires a larger amount."

45. Page 56, line 12.

Insert: "(c) The department must keep the information provided
under subsection (12)(a) confidential."

46. Page 57, line 13.

Strike: "An"

Insert: "Before initiating a contempt proceeding, the department
must give the alleged contemnor notice by personal service
or certified mail of the alleged infraction and a reasonably
opportunity to comply with the law and to cure the alleged
infraction. In order to initiate a contempt proceeding, an"

47. Page 59, line 9.

Strike: "alleged father"

Insert: "parents"

48. Page 61, lines 21 and 22.

Strike: "and" on line 21 through "hearing" on line 22

49. Page 64, line 18.

Following: "department."

Insert: "The alleged father's advance payment must be returned to
the alleged father if the test does not produce evidence of
the alleged father's paternity."

50. Page 67, line 17.

Following: "notice"

Insert: "by personal service or certified mail"

51. Page 69, lines 4 and 5.

Strike: "and" on line 4 through "hearing" on line 5

52. Page 69, line 7.

Insert: "Section 57. Section 40-5-273, MCA, is amended to read:

"40-5-273. **Administrative review of child support orders - modifying orders.** (1) A review application setting forth facts meeting any of the criteria for review of a child support order established in 40-5-272 must be scheduled for an administrative hearing, and a hearings officer must be appointed by the department. Unless the hearings officer determines under rules of the department that an in-person hearing is necessary, the hearing must be conducted by telephone conference. The order scheduling the hearing must be served on the obligor and the obligee at least 60 days before the hearing. The order must include the following information as an exception to 2-4-601:

(a) the date and time for the hearing and, if appropriate, the place for the hearing;

(b) a statement of the purpose, objectives, and possible consequences of the review;

(c) a statement of the right of the obligor and the obligee to request the hearings officer to issue subpoenas compelling the appearance of witnesses and the production of documents for the hearing; and

(d) a requirement that the obligor and the obligee provide the hearings officer with telephone numbers at which they and their witnesses may be contacted for the hearing.

(2) The hearings officer may issue an order commanding the obligor or the obligee, or both, to produce financial information. The order must be personally served with the order scheduling the hearing. The hearings officer may also issue subpoenas ordering the department or other parties to produce information in their possession about the obligor and the obligee that may be reasonably necessary for application of the guidelines. Any information so obtained by the hearings officer must be provided to the department and other parties prior to the hearing.

(3) The requested modification of the order must be determined on the evidence submitted to the hearings officer under the following conditions:

(a) If an applicant other than the department fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered a withdrawal of the application.

(b) If a party other than the applicant fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered to mean that the party does not oppose the modification.

(c) If the department is the applicant and if either the obligor or the obligee, or both, fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered an admission that the party or parties do not oppose the modification.

(4) An order entered under the circumstances described in

subsection (3)(a), (3)(b), or (3)(c) becomes final within 10 days of issuance unless a party provides the hearings officer an affidavit showing good cause for failure to provide a telephone number or failure to be available for the hearing when telephoned.

(5) A provision of law may not be construed to mean that an obligor or an obligee is a client of the department, and the department is not considered a party to the action.

(6) (a) In addition to the powers and duties provided by other law, the hearings officer shall, to ensure the equitable determination of a support obligation, during a review hearing:

(i) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts;

(ii) introduce evidence on behalf of the parties;

(iii) apply the guidelines to the facts elicited from the hearing; and

(iv) inquire as to any circumstances that may require variance from the guidelines.

(b) If a party is represented by legal counsel, the hearings officer may allow the counsel to present that party's case.

(7) The hearings officer shall determine a support obligation in accordance with the guidelines and shall issue a modifying order. If the hearings officer determines that the difference between the existing support order and the amount determined under the guidelines is negligible under rules issued by the department, the modifying order may not change the amount of the support obligation. Even though the review may indicate that a modification of the support obligation is appropriate, the department may not modify the support order if the hearings officer determines, after the review hearing, that to do so would not be in the best interests of the child under the rules issued by the department. An increase in child support is presumed to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee demonstrates it would not be in the best interests of the child. The modifying order must prospectively modify the underlying support order from the date of service of the order scheduling the hearing and may modify the underlying order from the date found to be the date that the amount required for support decreased. The obligee may be ordered to repay the obligor for any support amount overpayment found to have been paid since the date that the amount required for support decreased. The department must, on request of the obligor, enforce the obligee's repayment of the overpaid amount, using any procedure provided in this chapter for payment, enforcement, and collection of child support or a delinquency.

(8) The hearings officer shall make a written determination whether health insurance is available to the child of the obligor through the obligor's employment or other group insurance. If the hearings officer determines health insurance is available to the child of the obligor, the hearings officer shall issue a modifying order that requires the obligor to obtain and keep health insurance for the child. If the hearings officer determines that health insurance is not available to the child of

the obligor, he shall issue a modifying order containing the notices provided in subsection (9). An order to provide health insurance is presumed to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee demonstrates it would not be in the best interests of the child.

(9) In addition to complying with other requirements of law, the modifying order must include the following notices and warnings:

(a) that the obligor shall keep the department informed of the name and address of his current employer and information on health insurance available to the obligor through the obligor's employment or other group insurance;

(b) that the obligor shall obtain and keep health insurance for the child of the obligor whenever it is available through the obligor's employment or other group insurance; and

(c) that the modifying order is subject to future administrative review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D.

(10) Orders entered under this section are final agency decisions, subject to judicial review pursuant to the Montana Administrative Procedure Act. All orders entered under this section must notify the parties that the order is subject to judicial review under Title 2, chapter 4, part 7.

(11) The parties to the support order and the department when it is providing services under IV-D may enforce the support order or modify that order independently, as provided in 40-4-208 and 53-2-613(4)(d)."

Renumber: subsequent sections

53. Page 70, lines 2 and 3.

Strike: "or" on line 2 through "entity" on line 3

54. Page 70, line 9.

Strike: "support beginning on the day"

Insert: "if"

55. Page 70, line 10.

Following: "support"

Insert: ", a person or entity referred to in subsection (2)

notifies the obligor that income withholding will be initiated if the delinquent amount is not paid within 8 days of receipt of the notice, and the obligor does not pay the delinquent amount within that time. Notification that income withholding will be initiated if a delinquency is not paid within 8 days of receipt of the notice is not necessary if such a notice was given for a prior delinquency and the prior delinquency in fact existed."

56. Page 70, line 16.

Strike: "who" through "delinquent"

57. Page 70, line 17.

Strike: "A TEMPORARY"

Insert: "an"
Strike: "provided for in 40-5-308"

58. Page 72, lines 25 through 28.
Strike: subsection (1) in its entirety

59. Page 72, line 29
Strike: "(2)"

60. Page 72, line 30.
Following: line 29
Insert: "under 40-5-305"
Strike: "issuance"

61. Page 73, line 1.
Strike: "OR"
Following: "support"
Insert: "if there was a prior income deduction order for a
delinquency that in fact existed"

62. Page 73, line 9.
Strike: "take place"
Insert: "continue"

63. Page 73, line 21.
Following: "determines"
Insert: "that there was a prior income deduction order for a
delinquency that in fact existed or that"

64. Page 74, lines 19 through 21.
Strike: subsection (4) in its entirety

65. Page 76, line 13.
Strike: "under 40-5-308"

66. Page 76, line 14.
Strike: ", regardless" through "delinquency"

67. Page 77, line 3.
Strike: "provided for by 40-5-308"

68. Page 77, line 13.
Following: "If"
Insert: "a deduction order is not for the full amount of each
support payment, and"
Following: "occurs"
Insert: "in the amount of one or more payments that are not paid
by income withholding"

69. Page 79, line 26.
Following: "delinquent."
Insert: "the department may notify the obligor that income
withholding will be initiated if the delinquent amount is
not paid within 8 days of receipt of the notice. If the
obligor does not pay the delinquent amount within that time,"

70. Page 79, line 27.

Following: "payor."

Insert: "Notification that income withholding will be initiated if a delinquency is not paid within 8 days of receipt of the notice is not necessary if such a notice was given for a prior delinquency and the prior delinquency in fact existed."

71. Page 80, line 24.

Strike: "intent to withhold"

Following: "income"

Insert: "withholding"

72. Page 81, line 24.

Strike: "intent to withhold"

Following: "income"

Insert: "withholding"

73. Page 83, line 4.

Following: "arrears"

Insert: "or if there was a prior order that is no longer in effect for a delinquency that in fact existed"

74. Page 83, lines 9 and 10.

Strike: "was served" on line 9 through "income" on line 10

Insert: "became delinquent"

75. Page 83, line 13.

Strike: "INTENT TO WITHHOLD"

Following: "INCOME"

Insert: "withholding"

76. Page 83, line 17.

Strike: "MUST TAKE PLACE"

Insert: "will continue"

77. Page 83, lines 21 and 22.

Strike: "intent" on line 21 through "withhold" on line 22

Insert: "income withholding"

78. Page 83, line 25.

Following: "order to"

Insert: "continue to"

79. Page 76, line 2.

Following: "who"

Insert: "purposely and"

80. Page 82, lines 6 and 7.

Strike: "OR" on line 6 through "hearing" on line 7

81. Page 85, line 15.

Insert: "(4) The requester must keep the information provided

under subsection (1) confidential."

82. Page 89, line 30.

Strike: "~~denying~~"

Insert: "making good faith efforts to deny"

83. Page 100, line 9.

Following: "~~matter~~."

Insert: "The recordkeeper must keep the social security number confidential, except that the number may be provided to the department of public health and human services for use in administering child support laws."

84. Page 106, line 15.

Insert: "(3) The department must keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering child support laws."

Re-number: subsequent subsection

85. Page 111, line 9.

Insert: "NEW SECTION. Section 100. Report to the legislature.

The department of public health and human services shall report to the regular session of the 56th legislature on progress toward resolving child support issues between the state, federal, and tribal governments.

Re-number: subsequent section

86. Page 111, line 21.

Insert: "NEW SECTION. Section 102. Coordination instruction.

If House Bill No. 168 is passed and approved and if it includes the words "or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing" or similar language in amendments to the following MCA sections, then that language is stricken from those sections:

17-4-105(4)(c)
40-5-189(1)
40-5-226(2)
40-5-414(3)
40-5-703(2)
40-5-824(5)

Re-number: subsequent sections

87. Page 112, lines 3 and 4.

Strike: section 102 in its entirety

Re-number: subsequent section

HOUSE OF REPRESENTATIVES

EXHIBIT 2
DATE 4/14/97
SB 374

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 4/14/97 BILL NO. SB 374 NUMBER #1MOTION: Concur As Amended

NAME	AYE	NO
REP. BOB CLARK, CHAIRMAN	✓	
REP. DANIEL MC GEE, VICE CHAIR		✓
REP. DIANA WYATT, VICE CHAIR		✓
REP. CHRIS AHNER		✓
REP. SHIELL ANDERSON	✓	
REP. ELLEN BERGMAN		✓
REP. WILLIAM BOHARSKI		✓
REP. AUBYN CURTISS		✓
REP. JON ELLINGSON		✓
REP. DUANE GRIMES		✓
REP. H. S. "SONNY" HANSON	✓	
REP. JOAN HURDLE		✓
REP. DEB KOTTEL		✓
REP. LINDA MC CULLOUGH		✓
REP. BRAD MOLNAR		✓
REP. GERALD PEASE	✓	
REP. DIANE SANDS		✓
REP. LIZ SMITH		✓
REP. LOREN SOFT	✓	
REP. BILL TASH	✓	

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HOUSE OF REPRESENTATIVES

EXHIBIT 3
DATE 4/14/97
SB 374

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 4/14/97 BILL NO. SB 374 NUMBER _____
MOTION: Concur As Amended

NAME	AYE	NO
REP. BOB CLARK, CHAIRMAN	✓	
REP. DANIEL MC GEE, VICE CHAIR	✓	
REP. DIANA WYATT, VICE CHAIR		✓
REP. CHRIS AHNER	✓	
REP. SHIELL ANDERSON	✓ ✓	
REP. ELLEN BERGMAN		✓
REP. WILLIAM BOHARSKI	✓	
REP. AUBYN CURTISS		✓
REP. JON ELLINGSON	✓	
REP. DUANE GRIMES	✓	
REP. H. S. "SONNY" HANSON	✓	
REP. JOAN HURDLE		✓
REP. DEB KOTTEL		✓
REP. LINDA MC CULLOUGH		✓
REP. BRAD MOLNAR		✓
REP. GERALD PEASE		✓
REP. DIANE SANDS		✓
REP. LIZ SMITH	✓	
REP. LOREN SOFT	✓	
REP. BILL TASH	✓	

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HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 4/14/87

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER		✗	✓
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date: July 4, 2007

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

HR
(House/Senate)

Bill#

304

Representative

Jim Ellis

Voting

Yes
(aye/no)

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date: 4.14.97

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

HB Bill# 374
(House/Senate)

Representative Chris Ahner Voting - No -
(aye/no)

as was -

Dr. appt 4:15

yes - on amendments.

yes - if amended to

bring it out of committee

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date: 2.12.77

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

512 Bill# 374
(House/Senate)

Representative Don Kead Voting ay
(aye/no)

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date: 4-14-97

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

S. B. Bill# 374, AS AMENDED.
(House/Senate)

Representative Jim Glick Voting Aye
(aye/no)

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date: 4/14/97

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

S Bill# 374
(House/Senate)

Representative

[Signature]

Voting

[Signature]
(aye/no)

*(6/10/97)
w/ DJG*

*as amended - to house floor.
Aye*

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date: 4/14/97

Mr. Chairman/Mr. Speaker:

I, the undersigned, do hereby

COMMITTEE ABSENTEE BALLOT

Date: 4-14-97

I hereby authorize Rep. Loft

to cast my vote(s) as follows:

w/Rep. Loft on all Amends & Bill
SB 374

Representative Shirley Anderson



HOUSE STANDING COMMITTEE REPORT

April 15, 1997

Page 1 of 14

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 374 (third reading copy -- blue) be concurred in as amended.

Signed:

Vice Chair
Bob Clark, Chair

And, that such amendments read:

Carried by: Rep. Soft

1. Title, line 7.
Strike: the second ", "
Insert: "AND"
2. Title, lines 8 and 9.
Strike: ", AND A" on line 8 through "HIRES" on line 9
3. Title, line 11.
Strike: "AVAILABILITY OF SOCIAL SECURITY NUMBERS,"
4. Title, lines 19 and 20.
Strike: "37-1-307" on line 19 through "40-4-105," on line 20
Strike: "40-5-158," on line 20
5. Title, line 21.
Strike: "40-5-186,"
6. Title, line 23.
Following: "40-5-271,"
Insert: "40-5-273,"
7. Title, line 27.
Strike: "50-15-403,"
Strike: "61-5-107,"
8. Title, line 28.
Strike: "RETROACTIVE APPLICABILITY"
Insert: "CONTINGENT TERMINATION"

Committee Vote:
Yes 11, No 9.

4/15
mp
801525SC.Hgd

9. Page 2, lines 2 and 3.
Strike: "11" on line 2 through "15]" on line 3
Insert: "13]"
10. Page 2, line 14.
Strike: "11]"
Insert: "9]"
11. Page 2, lines 16 and 17.
Strike: subsection (1) in its entirety
Renumber: subsequent subsections
12. Page 2, lines 20 through 26.
Strike: subsection (3) in its entirety
Renumber: subsequent subsections
13. Page 3, line 13.
Strike: subsection (8) in its entirety
Renumber: subsequent subsections
14. Page 3, lines 23 through 26.
Strike: subsection (12) in its entirety
Renumber: subsequent subsections
15. Page 5, lines 7 through 11.
Strike: subsection (8) in its entirety
Renumber: subsequent subsections
16. Page 6, line 8.
Strike: "11" through "15]"
Insert: "13]"
17. Page 6, line 14.
Strike: "ADEQUATELY PROVIDES FOR"
Insert: "maximizes"
18. Page 6, lines 15 and 16.
Strike: "11" on line 15 through "15]" on line 16
Insert: "13]"
19. Page 6, line 26.
Strike: "social security number, other"
20. Page 6, line 28.
Strike: "social security number, if any,"

21. Page 9, line 23.
Following: "obligation"
Insert: "unless the payment is verified by the department to its
satisfaction"

22. Page 12, line 23.
Strike: "11]"
Insert: "9]"
Strike: "accuracy"
Insert: "authenticity"

23. Page 12, line 26 through line 30 of page 13.
Strike: section 9 in its entirety
Renumber: subsequent sections

24. Page 14, lines 3 and 4.
Strike: "and the" on line 3 through "department" on line 4

25. Page 14, line 22 through line 1 of page 17.
Strike: section 11 in its entirety
Renumber: subsequent sections

26. Page 18, line 5.
Following: "obligor"
Insert: "and, if the employer elects under subsection (3) to
forward the funds to the department for distribution, to the
department"

27. Page 18, line 12.
Strike: the second "and"
Insert: "the funds and either"

28. Page 18, line 13.
Following: "funds"
Insert: "or forward the funds to the department to be distributed
by the department"

29. Page 19, line 28.
Strike: "13]"
Insert: "11]"

30. Page 21, line 27.
Strike: "14]"
Insert: "12]"

31. Page 22, line 28.
Strike: "15]"
Insert: "13]"

32. Page 24, line 13 through line 18 of page 26.
Strike: sections 22 through 24 in their entirety
Re-number: subsequent sections

33. Page 27, line 23.
Strike: "111"
Insert: "9]"

34. Page 28, line 24.
Strike: "social security number."

35. Page 29, line 3.
Insert: "(b) The court shall keep the information provided under subsection (6)(a) confidential except that the information may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act."
Re-number: subsequent subsection

36. Page 30, line 3.
Insert: "(9) A judgment, decree, or order that establishes or modifies a child support obligation must include a provision that if a parent or guardian is the obligee under a child support order and is obligated to pay a contribution for the same child under 41-3-406, 41-5-403, or 41-5-523, the parent or guardian assigns and transfers to the department of public health and human services all rights that the parent or guardian may have to child support that are not otherwise assigned under 53-2-613."

37. Page 35, line 19 through line 10 of page 36.
Strike: section 30 in its entirety
Re-number: subsequent sections

38. Page 36, line 23.
Following: "law"
Insert: "or procedure"

39. Page 36, line 25.
Following: "law"
Insert: "or procedure"

40. Page 39, line 13.
Strike: "this" through "registration"
Insert: "40-5-184 through 40-5-195"

41. Page 39, lines 19 through 25.
Strike: section 36 in its entirety
Re-number: subsequent sections

42. Page 40, line 7.

Following: "~~of the~~"

Insert: "the date of mailing or personal service of the"

43. Page 41, line 4.

Strike: "[section 10]"

Insert: "subsection (5)"

44. Page 41, line 27.

Insert: "(5) (a) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this state exercising jurisdiction under subsection (5) (a) shall apply the provisions of 40-5-103, 40-5-143 through 40-5-152, 40-5-181, and 40-5-184 through 40-5-195 to the enforcement or modification proceeding. The remaining sections of this part do not apply."

Renumber: subsequent subsections

45. Page 46, line 10.

Strike: "The"

Insert: "During or in anticipation of a delinquency, enforcement, or modification proceeding, a proceeding to establish child or medical support or paternity, an attempt to locate an obligor, or a contested case, the"

46. Page 46, line 17.

Strike: subsection (d) in its entirety

Renumber: subsequent subsections

47. Page 46, line 26.

Following: "agency"

Insert: "during or in anticipation of a delinquency, enforcement, or modification proceeding, a proceeding to establish child or medical support or paternity, an attempt to locate an obligor, or a contested case"

48. Page 51, line 26.

Strike: "obligor may seek a"

Insert: "obligee shall"

Strike: "from"

Insert: "to"

Strike: "obligee for"

Insert: "obligor"

Following: "any"

Insert: "improper"

49. Page 51, line 27.

Following: "order"

Insert: ", plus any costs the obligee incurs in recovering the amount to be refunded"

50. Page 53, line 25.

Following: "determination."

Insert: "However, the default order may not be for more than the support requested in the notice unless the hearings officer finds that the evidence requires a larger amount."

51. Page 54, line 26.

Strike: "11]"

Insert: "9]"

52. Page 55, line 28.

Strike: subsection (ii) in its entirety

Renumber: subsequent subsections

53. Page 56, line 12.

Insert: "(c) The department shall keep the information provided under subsection (12)(a) confidential except as necessary for purposes of Title IV-D of the Social Security Act."

54. Page 57, lines 10 through 12.

Strike: "; or" on line 10 through "department" on line 12

55. Page 57, line 13.

Strike: "An"

Insert: "Before initiating a contempt proceeding, the department shall give the alleged contemnor notice by personal service or certified mail of the alleged infraction and a reasonable opportunity to comply with the law and to cure the alleged infraction. In order to initiate a contempt proceeding, an"

56. Page 59, line 9.

Strike: "alleged father"

Insert: "parents"

57. Page 61, lines 21 and 22.

Strike: "and" on line 21 through "hearing" on line 22

58. Page 63, line 18.

Strike: "The" through "jury."

59. Page 64, line 18.

Following: "department."

Insert: "The alleged father's advance payment must be returned to the alleged father if the test does not produce evidence of the alleged father's paternity."

60. Page 67, line 17.

Following: "notice"

Insert: "by personal service or certified mail"

61. Page 69, lines 4 and 5.

Strike: the second "and" on line 4 through "hearing" on line 5

62. Page 69, line 7.

Insert: "Section 50. Section 40-5-273, MCA, is amended to read:

"40-5-273. **Administrative review of child support orders - modifying orders.** (1) A review application setting forth facts meeting any of the criteria for review of a child support order established in 40-5-272 must be scheduled for an administrative hearing, and a hearings officer must be appointed by the department. Unless the hearings officer determines under rules of the department that an in-person hearing is necessary, the hearing must be conducted by telephone conference. The order scheduling the hearing must be served on the obligor and the obligee at least 60 days before the hearing. The order must include the following information as an exception to 2-4-601:

(a) the date and time for the hearing and, if appropriate, the place for the hearing;

(b) a statement of the purpose, objectives, and possible consequences of the review;

(c) a statement of the right of the obligor and the obligee to request the hearings officer to issue subpoenas compelling the appearance of witnesses and the production of documents for the hearing; and

(d) a requirement that the obligor and the obligee provide the hearings officer with telephone numbers at which they and their witnesses may be contacted for the hearing.

(2) The hearings officer may issue an order commanding the obligor or the obligee, or both, to produce financial information. The order must be personally served with the order scheduling the hearing. The hearings officer may also issue subpoenas ordering the department or other parties to produce information in their possession about the obligor and the obligee that may be reasonably necessary for application of the guidelines. Any information so obtained by the hearings officer must be provided to the department and other parties prior to the hearing.

(3) The requested modification of the order must be determined on the evidence submitted to the hearings officer

under the following conditions:

(a) If an applicant other than the department fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered a withdrawal of the application.

(b) If a party other than the applicant fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered to mean that the party does not oppose the modification.

(c) If the department is the applicant and if either the obligor or the obligee, or both, fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered an admission that the party or parties do not oppose the modification.

(4) An order entered under the circumstances described in subsection (3)(a), (3)(b), or (3)(c) becomes final within 10 days of issuance unless a party provides the hearings officer an affidavit showing good cause for failure to provide a telephone number or failure to be available for the hearing when telephoned.

(5) A provision of law may not be construed to mean that an obligor or an obligee is a client of the department, and the department is not considered a party to the action.

(6) (a) In addition to the powers and duties provided by other law, the hearings officer shall, to ensure the equitable determination of a support obligation, during a review hearing:

(i) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts;

(ii) introduce evidence on behalf of the parties;

(iii) apply the guidelines to the facts elicited from the hearing; and

(iv) inquire as to any circumstances that may require variance from the guidelines.

(b) If a party is represented by legal counsel, the hearings officer may allow the counsel to present that party's case.

(7) The hearings officer shall determine a support obligation in accordance with the guidelines and shall issue a modifying order. If the hearings officer determines that the difference between the existing support order and the amount determined under the guidelines is negligible under rules issued by the department, the modifying order may not change the amount of the support obligation. Even though the review may indicate that a modification of the support obligation is appropriate, the department may not modify the support order if the hearings officer determines, after the review hearing, that to do so would

not be in the best interests of the child under the rules issued by the department. An increase in child support is presumed to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee demonstrates it would not be in the best interests of the child. The modifying order must ~~prospectively~~ modify the underlying support order from the date of service of the order scheduling the hearing and may modify the underlying order from the date found to be the date that the amount required for support decreased. The obligee may be ordered to repay the obligor for any support amount overpayment found to have been paid since the date that the amount required for support decreased. If the case is a IV-D case, the department shall, on request of the obligor, enforce the obligee's repayment of the overpaid amount using any procedure provided in this chapter for payment, enforcement, and collection of child support or a delinquency.

(8) The hearings officer shall make a written determination whether health insurance is available to the child of the obligor through the obligor's employment or other group insurance. If the hearings officer determines health insurance is available to the child of the obligor, the hearings officer shall issue a modifying order that requires the obligor to obtain and keep health insurance for the child. If the hearings officer determines that health insurance is not available to the child of the obligor, ~~he~~ the hearings officer shall issue a modifying order containing the notices provided in subsection (9). An order to provide health insurance is presumed to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee demonstrates it would not be in the best interests of the child.

(9) In addition to complying with other requirements of law, the modifying order must include the following notices and warnings:

(a) that the obligor shall keep the department informed of the name and address of ~~his~~ the obligor's current employer and information on health insurance available to the obligor through the obligor's employment or other group insurance;

(b) that the obligor shall obtain and keep health insurance for the child of the obligor whenever it is available through the obligor's employment or other group insurance; and

(c) that the modifying order is subject to future administrative review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D.

(10) Orders entered under this section are final agency decisions, subject to judicial review pursuant to the Montana Administrative Procedure Act. All orders entered under this section must notify the parties that the order is subject to

judicial review under Title 2, chapter 4, part 7.

(11) The parties to the support order and the department when it is providing services under IV-D may enforce the support order or modify that order independently, as provided in 40-4-208 and 53-2-613(4)(d)."

Renumber: subsequent sections

63. Page 70, lines 2 and 3.

Strike: "or" on line 2 through "entity," on line 3

64. Page 70, line 9.

Strike: "beginning on the day"

Insert: "if"

65. Page 70, line 10.

Following: "support"

Insert: ", a person or entity referred to in subsection (2) notifies the obligor that income withholding will be initiated if the delinquent amount is not paid within 8 days of receipt of the notice, and the obligor does not pay the delinquent amount within that time. Notification that income withholding will be initiated if a delinquency is not paid within 8 days of receipt of the notice is not necessary if such a notice was given for a prior delinquency and the prior delinquency in fact existed"

66. Page 70, line 16.

Strike: "who" through "delinquent"

67. Page 70, line 17.

Strike: "A TEMPORARY"

Insert: "an"

Strike: "provided for in 40-5-308"

68. Page 73, line 21.

Following: "determines"

Insert: "that there was a prior income-deduction order for a delinquency that in fact existed or that"

69. Page 76, line 2.

Following: "who"

Insert: "purposely and"

70. Page 76, line 13.

Strike: "under 40-5-308"

71. Page 76, line 14.
Strike: ", regardless" through "delinquency"

72. Page 77, line 3.
Strike: "provided for by 40-5-308"

73. Page 77, line 13.
Following: "If"
Insert: "a deduction order is not for the full amount of each
support payment and"
Following: "occurs"
Insert: "in the amount of one or more payments that are not paid
by income withholding"

74. Page 79, line 26.
Following: "delinquent,"
Insert: "the department may notify the obligor that income
withholding will be initiated if the delinquent amount is
not received within 8 days of receipt of the notice. If the
obligor does not pay the delinquent amount within that
time,"

75. Page 79, line 27.
Following: "payor."
Insert: "Notification that income withholding will be initiated
if the delinquent amount is not received within 8 days of
receipt of the notice is not necessary if such a notice was
given for a prior delinquency and the prior delinquency in
fact existed."

76. Page 80, line 24.
Strike: "intent to withhold"
Following: "income"
Insert: "withholding"

77. Page 81, line 24.
Strike: "intent to withhold"
Following: "income"
Insert: "withholding"

78. Page 82, lines 6 and 7.
Strike: "OR" on line 6 through "hearing" on line 7

79. Page 83, line 4.
Following: "arrears"
Insert: "or if there was a prior order that is no longer in
effect for a delinquency that in fact existed"

80. Page 83, lines 9 and 10.
Strike: "was served" on line 9 through "income" on line 10
Insert: "became delinquent"
81. Page 83, line 13.
Strike: "INTENT TO WITHHOLD"
Following: "INCOME"
Insert: "withholding"
82. Page 83, lines 21 and 22.
Strike: "intent" on line 21 through "withhold" on line 22
Insert: "income withholding"
83. Page 83, line 25.
Following: "order to"
Insert: "continue to"
84. Page 85, line 2.
Strike: subsection (b) in its entirety
Re-number: subsequent subsections
85. Page 85, line 15.
Insert: "(4) The requester shall keep the information provided
under subsection (1) confidential except for purposes of
Title IV-D of the Social Security Act."
86. Page 87, line 1.
Strike: the first ", "
Insert: "and"
Strike: ", and," through "obligor" on line 2
87. Page 89, line 30.
Strike: "denying"
Insert: "making good faith efforts to deny"
88. Page 96, line 3.
Strike: "The" through "jury."
89. Page 98, line 21.
Strike: "11]"
Insert: "9]"
90. Page 99, line 16.
Strike: subsection (ii) in its entirety
Re-number: subsequent subsections
91. Page 100, lines 8 and 9.
Strike: subsection (11) in its entirety

92. Page 103, line 26 through line 7 of page 104.
Strike: section 94 in its entirety
Renumber: subsequent sections

93. Page 105, line 28 through line 19 of page 106.
Strike: section 96 in its entirety
Renumber: subsequent sections

94. Page 111, line 9.
Insert: "NEW SECTION. Section 91. Report to legislature. The department of public health and human services shall report to the regular session of the 56th legislature on progress toward resolving child support issues between the state, federal, and tribal governments."
Renumber: subsequent sections

95. Page 111, line 10 and line 12.
Strike: "11]"
Insert: "9]"

96. Page 111, line 13 and line 14
Strike: "12]"
Insert: "10]"

97. Page 111, line 15 and line 16.
Strike: "13]"
Insert: "11]"

98. Page 111, line 17 and line 18.
Strike: "14]"
Insert: "12]"

99. Page 111, line 19 and line 20.
Strike: "15]"
Insert: "13]"

100. Page 111, line 21.
Insert: "NEW SECTION. Section 93. Coordination instruction. If House Bill No. 168 is passed and approved and if it includes the words "or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing" or similar language in amendments to the following MCA sections, then that language is stricken from those sections:
17-4-105(4)(c)
40-5-189(1)
40-5-226(2)
40-5-414(3)

40-5-703(2)
40-5-824(5)."

Renumber: subsequent sections

101. Page 112, lines 3 and 4.
Strike: section 102 in its entirety
Renumber: subsequent section

102. Page 112, line 8.
Strike: "10,"
Strike: "13"
Insert: "11"

103. Page 112, line 9.
Insert: "NEW SECTION. Section 97. Contingent termination.
[This act] terminates on the date of the suspension if the
federal government suspends federal payments to this state
for this state's child support enforcement program or for
one or more of this state's welfare programs because of this
state's failure to enact law as required by the federal
Personal Responsibility and Work Opportunity Reconciliation
Act of 1996."

-END-

SENATE BILL NO. 374

INTRODUCED BY HARGROVE

A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING THE CHILD SUPPORT PROVISIONS OF THE FEDERAL PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996; CREATING AN ADVISORY BOARD TO ADVISE THE DEPARTMENT; INSTITUTING AUTOMATED, MASS CASE PROCESSING TECHNIQUES FOR CHILD SUPPORT, INCLUDING A CENTRAL CASE REGISTRY, AND A CENTRALIZED UNIT FOR TRACKING AND DISBURSING CHILD SUPPORT COLLECTIONS, ~~AND A DIRECTORY OF NEW HIRES~~; RESTRUCTURING EXISTING CHILD SUPPORT PROCEDURES BY INCLUDING REVISED INCOME-WITHHOLDING PROCEDURES, REVISED PATERNITY ESTABLISHMENT PROCESSES, ~~AVAILABILITY OF SOCIAL SECURITY NUMBERS~~, EXPANDED ACCESS TO PUBLIC AND PRIVATE SOURCES OF INFORMATION FOR LOCATE PURPOSES, AVAILABILITY OF OTHER AUTOMATED LOCATE SOURCES, WORK REQUIREMENTS FOR PARENTS OWING SUPPORT, ENHANCED INTERSTATE ENFORCEMENT PROCEDURES INVOLVING INTERSTATE LIENS AND SUBPOENAS, AND EXPANDED LICENSE SUSPENSION PROCEDURES TO INCLUDE RECREATIONAL LICENSES; PROVIDING THAT ADMINISTRATIVE ORDERS HAVE FULL FORCE AND EFFECT WITHOUT FILING THEM WITH THE DISTRICT COURT; REVISING ADMINISTRATIVE REGISTRATION PROCEDURES; GENERALLY REVISING THE UNIFORM INTERSTATE FAMILY SUPPORT ACT TO MAKE CHANGES REQUIRED BY THE FEDERAL ACT; ESTABLISHING AN INTERIM COMMITTEE TO STUDY THE CHILD SUPPORT SYSTEM; PROVIDING AN APPROPRIATION FOR THE ACTIVITIES OF THE COMMITTEE; AMENDING SECTIONS 19-2-1004, 19-18-612, 19-19-504, 19-20-706, 19-21-212, 25-13-608, ~~37-1-307, 40-1-107, 40-4-106~~, 40-4-204, 40-4-206, 40-5-103, 40-5-149, 40-5-151, ~~40-5-158~~, 40-5-161, 40-5-162, 40-5-163, 40-5-164, 40-5-173, ~~40-5-186~~, 40-5-188, 40-5-189, 40-5-194, 40-5-195, 40-5-196, 40-5-201, 40-5-203, 40-5-206, 40-5-210, 40-5-225, 40-5-226, 40-5-227, 40-5-232, 40-5-233, 40-5-235, 40-5-236, 40-5-237, 40-5-263, 40-5-264, 40-5-271, 40-5-273, 40-5-274, 40-5-302, 40-5-303, 40-5-304, 40-5-305, 40-5-306, 40-5-307, 40-5-308, 40-5-309, 40-5-310, 40-5-312, 40-5-313, 40-5-314, 40-5-315, 40-5-403, 40-5-404, 40-5-412, 40-5-413, 40-5-414, 40-5-421, 40-5-423, 40-5-443, 40-5-701, 40-5-702, 40-5-703, 40-5-704, 40-5-709, 40-5-710, 40-5-711, 40-6-102, 40-6-105, 40-6-111, 40-6-115, 40-6-116, 40-6-117, 50-15-210, 50-15-223, ~~50-15-403~~, 53-2-613, ~~61-5-107~~, 87-1-102, AND 87-1-108, ~~87-2-106~~, ~~AND 87-2-202~~, MCA; AND PROVIDING EFFECTIVE DATES AND A ~~RETROACTIVE APPLICABILITY~~ CONTINGENT TERMINATION

1 DATE."

3
4 STATEMENT OF INTENT

5 A statement of intent is required for this bill because [section 2] grants the department of public
6 health and human services authority to adopt rules to implement [sections 1 through ~~11, 12, 13, 14, AND~~
~~15, 13~~]. The rules should ~~at a minimum~~ address:

7 ~~(1) routine procedural and operational matters not provided for in [sections 1 through 11]; and~~
8 ~~(2) supplementary information necessary for the efficient and effective operation of the child~~
9 ~~support information and processing unit. The department should weigh the need for the information against~~
10 ~~the personal intrusiveness of the requested information and the difficulty of obtaining the information AND~~
11 SHOULD ADOPT RULES THAT MINIMIZE THE PERSONAL INTRUSIVENESS OF THE REQUESTED
12 INFORMATION AND THAT MINIMIZE THE COSTS TO THE DEPARTMENT, EMPLOYERS, AND EMPLOYEES
13 IN RESPONSE TO ANY DIFFICULTIES IN OBTAINING THE INFORMATION.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 NEW SECTION. Section 1. Definitions. As used in [sections 1 through ~~44~~ 9], unless the context
18 requires otherwise, the following definitions apply:

19 ~~(1) "Date of hire" means the first day that an employee starts work for which the employee is~~
20 ~~owed compensation by the payor of income.~~

21 ~~(2)(1) "Department" means the department of public health and human services provided for in~~
22 ~~2-15-2201.~~

23 ~~(3) (a) "Employee" means a person 18 years of age or older who performs labor in this state for~~
24 ~~an employer in this state for compensation and for whom the employer withholds federal or state tax~~
25 ~~liabilities from the employee's compensation.~~

26 ~~(b) The term does not include an employee of a federal or state agency performing intelligence or~~
27 ~~counterintelligence functions if the head of the agency has determined that reporting pursuant to [section~~
28 ~~9] with respect to the employee could endanger the safety of the employee or compromise an ongoing~~
29 ~~investigation or intelligence mission.~~

30 ~~(4)(2) "Employer" means a person, firm, corporation, association, governmental entity, or labor~~

1 organization that engages an employee for compensation and withholds federal or state tax liabilities from
2 the employee's compensation.

3 ~~(5)~~(3) "Foreign support order" means a support order entered or last modified by a court or
4 administrative agency of another state, the District of Columbia, the Commonwealth of Puerto Rico, a
5 territory or insular possession subject to the jurisdiction of the United States, an Indian tribe, or a foreign
6 jurisdiction.

7 ~~(6)~~(4) "Income withholding" generally means procedures for directing a payor to withhold from an
8 obligor's income an amount sufficient to pay the obligor's support obligation and to defray arrears that are
9 or may become due. Specifically:

10 (a) when preceded by "IV-D", income withholding means the procedures set out in Title 40,
11 chapter 5, part 4; and

12 (b) when preceded by "non IV-D", income withholding means those cases in which an immediate
13 income-withholding order is issued under 40-5-315 after January 1, 1994.

14 ~~(7)~~(5) "Interstate case" means a case referred to the department by, or from the department to,
15 another IV-D agency.

16 ~~(8) "Labor organization" means a labor union, union local, union affiliate, or union hiring hall.~~

17 ~~(9)~~(6) "Obligee" means the payee under a support order or a person or agency entitled to receive
18 support payments.

19 ~~(10)~~(7) "Obligor" means a person who is obligated to pay support under a support order.

20 ~~(11)~~(8) "Payor" means:

21 (a) an employer or person engaged in a trade or business in this state who engages an employee
22 for compensation; or

23 (b) when used in context with income withholding, means a person, firm, corporation, association,
24 employer, trustee, political subdivision, state agency, or agent paying income to an obligor on a periodic
25 basis.

26 ~~(12) "Rehire" means the first day, following a termination of employment, that an employee begins~~
27 ~~to again perform work or provide services for a payor. Termination of employment does not include~~
28 ~~temporary separations from employment, such as unpaid medical leave, an unpaid leave of absence, or a~~
29 ~~temporary or seasonal layoff.~~

30 ~~(13)~~(9) "Support order" means a judgment, decree, or order, whether temporary or final, that:

1 (a) is for the benefit of a child or a state agency;
2 (b) provides for monetary support, health care, arrearages, or reimbursement;
3 (c) may include related costs and fees, interest, and similar other relief; and
4 (d) may include an order for maintenance to be paid to a former spouse when the former spouse
5 is the custodial parent of a child for whom child support is awarded ~~under the same judgment decree or~~
6 ~~order.~~

7 ~~(14)(10)~~ "IV-D" or "IV-D case" means a case in which the department is providing services under
8 the provisions of Title IV-D of the Social Security Act and the regulations promulgated under that act. A
9 IV-D case also includes a case in which the department is collecting a support debt assigned to this or
10 another state under Title IV-D.

11
12 **NEW SECTION. Section 2. Child support information and processing unit.** (1) The department
13 shall establish and maintain a centralized child support case registry and payment processing unit. The
14 purpose of this unit is to facilitate mass case processing by utilizing computer technology to identify parents
15 and their income and to initiate automated procedures to collect child support as it becomes due and
16 payable.

17 (2) The case registry must include a data base of information concerning child support orders, all
18 cases receiving IV-D services, and all district court and administrative cases with support orders entered
19 or modified after October 1, 1998.

20 (3) The case registry must use automated systems to obtain information from federal, state, and
21 local data bases with regard to the location of obligors and their income and assets. ~~Upon request, this~~
22 ~~THIS~~ information ~~may~~ **MUST** be shared with the courts **OF THIS STATE** and, **UPON REQUEST, MAY BE**
23 **SHARED WITH** child support enforcement agencies of this and other states for the purpose of establishing
24 paternity and establishing and enforcing child support obligations.

25 (4) To assist creditors, credit managers, and others who need timely verification of the existence
26 of child support liens in IV-D cases, the case registry must include a directory of liens, which must include
27 liens against an obligor's real and personal property filed by the department with other agencies and lien
28 registries. Information in the lien registry may be made available through automated systems, which may
29 include voice response units.

30 (5) Each IV-D case with a child support order must be electronically monitored so that when a

timely payment of support is not made, enforcement action may be taken. To accomplish this purpose, payments due under a child support order must be paid to the department for processing and disbursement.

(6) In either a IV-D income-withholding case in this state or a state non IV-D case, if immediate income withholding is authorized after January 1, 1994, an employer or other payor of income shall pay all support withheld from an obligor's income to one centralized location as specified by the department.

(7) To facilitate automated disbursement of support payments, automated enforcement actions, and service of notice when required, an obligor or obligee must be directed to provide, and update as necessary, information sufficient to locate the obligor and obligee and to locate the obligor's income and assets.

~~(8) An employer or labor organization shall report a newly hired or returning employee. Information reported by an employer must be electronically compared to the information data base to align an obligor who owes a duty of support with a source of income. When a match is revealed in a IV-D case, a notice will, if appropriate to the case, be promptly transmitted to the employer directing the employer to commence withholding for the payment of the obligor's support obligation.~~

~~(9)~~(8) The department may enter into contracts or cooperative agreements with any person, business, firm, corporation, or state agency to establish, operate, or maintain the case registry and payment processing unit or any function or service afforded by the unit, provided that:

(a) the department is ultimately responsible for operation of the case registry and payment processing unit, including any function or service afforded by the unit; and

(B) THERE IS A BOARD TO ACT IN AN ADVISORY CAPACITY TO THE CASE REGISTRY AND PROCESSING UNIT. THE BOARD SHALL ADVISE THE DEPARTMENT IN THE POLICY, DIRECTION, CONTROL, AND MANAGEMENT OF THE CASE REGISTRY AND PROCESSING UNIT AND IN DETERMINING FORMS, DATA PROCESSING NEEDS, TERMS OF CONTRACTS AND COOPERATIVE AGREEMENTS, AND OTHER SIMILAR TECHNICAL REQUIREMENTS. BOARD MEMBERS WHO ARE NOT EMPLOYED BY THE DEPARTMENT SHALL SERVE WITHOUT PAY, BUT ARE ENTITLED TO REIMBURSEMENT FOR TRAVEL, MEALS, AND LODGING WHILE ENGAGED IN BOARD BUSINESS, AS PROVIDED IN 2-18-501 THROUGH 2-18-503. EXCEPT FOR MEMBERS WHO REPRESENT THE DEPARTMENT, APPOINTED BOARD MEMBERS SHALL SERVE FOR A TERM OF 2 YEARS. THE BOARD CONSISTS OF FIVE MEMBERS AS FOLLOWS:

(I) A DISTRICT COURT JUDGE NOMINATED BY THE DISTRICT COURT JUDGES' ASSOCIATION;

(II) A CLERK OF COURT NOMINATED BY THE ASSOCIATION OF CLERKS OF THE DISTRICT

1 COURTS:

2 (III) THE SUPREME COURT ADMINISTRATOR OR DESIGNEE;

3 (IV) TWO MEMBERS, APPOINTED BY THE DEPARTMENT DIRECTOR, ONE FROM THE CHILD
4 SUPPORT ENFORCEMENT DIVISION AND ONE FROM THE OPERATIONS AND TECHNOLOGY DIVISION;
5 AND

6 (V) A REPRESENTATIVE OF A COUNTY DATA PROCESSING UNIT, NOMINATED BY THE
7 ASSOCIATION OF CLERKS OF THE DISTRICT COURTS; AND

8 ~~(b)(C)~~ the costs charged to the department under the contract or cooperative agreement may not
9 exceed the actual costs that the department would have incurred without the contract or cooperative
10 agreement.

11 ~~(10)(9)~~ The department may adopt rules to implement [sections 1 through ~~11, 12, 13, 14, AND~~
12 ~~15~~ 13]. RULES MUST BE DRAFTED, ADOPTED, AND APPLIED IN A MANNER THAT:

13 (A) MINIMIZES THE PERSONAL INTRUSIVENESS ON THE EMPLOYER OR EMPLOYEE OF ANY
14 REQUESTED INFORMATION;

15 (B) MINIMIZES THE COSTS TO THE DEPARTMENT AND ANY EMPLOYER OR EMPLOYEE WITH
16 RESPECT TO OBTAINING AND SUBMITTING ANY REQUESTED INFORMATION; AND

17 (C) ADEQUATELY PROVIDES FOR MAXIMIZES THE CONFIDENTIALITY AND SECURITY OF ANY
18 EMPLOYER OR EMPLOYEE INFORMATION THAT THE DEPARTMENT GATHERS UNDER [SECTIONS 1
19 THROUGH 11, 12, 13, 14, AND 15] 13].

20
21 NEW SECTION. Section 3. Case registry -- abstracts -- information required -- mandatory updating.

22 (1) There must be registered in the case registry an abstract of:

23 (a) each case, including interstate cases, receiving IV-D services provided by the department;

24 (b) each support order entered and each modification of an existing support order made in this state
25 after October 1, 1998; and

26 (c) each subsequent order or action establishing, modifying, adjusting, granting relief from,
27 terminating, or otherwise affecting a support order in a registered case.

28 (2) Each abstract must include:

29 (a) the name, sex, ~~social security number, other~~ identification numbers, if any, date of birth,
30 driver's license number, telephone number, and residential and mailing addresses of the parents;

(b) the child's name, date of birth, sex, ~~social security number, if any,~~ and residential address if different from that of the child's custodian;

(c) the name and location of the obligee if the obligee is a person or agency other than the child's parent;

(d) the name, address, and telephone number of the obligor's employer or of another payor of income to the obligor;

(e) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage, or if the child is not covered, information as to the availability of coverage for the child through the obligor's and obligee's employers; and

(f) any other information that the department considers relevant and requires by rule.

(3) The abstract of a support order must include:

(a) the amount of the support payment and supplemental support payments, if any, for each child and the amount of spousal maintenance if ordered in the same case;

(b) the specific day or dates the payment is due;

(c) the inclusive dates of the support obligation;

(d) the terms of any condition that may affect the amount of the payment, the due date, or the obligation to pay support;

(e) each subsequent judgment for support arrears and the amounts of any interest, late payment penalties, and fees included in the judgment;

(f) any specific child support lien imposed against real or personal property of the obligor;

(g) the terms of any medical and health coverage provision for the child; and

(h) the name and county of the judicial district or the name and address of the agency where the record of the case is located and the cause number or case identification number for the case.

(4) (a) For each IV-D case with a support order registered in the case registry, there must be a record of the date and the amount of support payments made by the obligor, dates and amounts of support collected from other sources, dates of distribution of support payments, names and locations of persons or agencies to whom support payments and collections were distributed, and the balance of support owed by the obligor.

(b) Except as provided in subsection (5), the department need not maintain payment records in a

1 non IV-D case.

2 (5) A copy of each non IV-D income-withholding order must be included in the case registry. For
3 each registered income-withholding order, there must be a record of payments received by the department
4 from the payor under the income-withholding order, the date and amount of each payment, the date the
5 department distributed the payment, and the person or agency to whom the payment was distributed.

6 (6) The statistical report required by the department under 50-15-302 may be combined with and
7 made a part of the abstract of support order form.

8 (7) (a) Each support order entered or modified in this state after October 1, 1998, must include a
9 requirement that the obligor and obligee update, as necessary, the information included in the abstract
10 under subsection (2).

11 (b) The order must also provide that in a subsequent child support enforcement action, upon
12 sufficient showing that diligent effort has been made to ascertain the location of the obligor or obligee, the
13 court or agency taking the enforcement action may consider the due process requirements for notice and
14 service of process to be met with respect to the party upon delivery of written notice by regular mail to the
15 most recent address or employer address reported to the case registry.

16 (c) If the support order does not include the provisions required by subsections (7)(a) and (7)(b)
17 or if the support order was entered or last modified in this state before October 1, 1998, the department
18 may give written notice of the provisions to the obligor and obligee. Upon receipt of the notice, the
19 provisions have the same force and effect on the obligor and obligee as if included in the support order.

20

21 **NEW SECTION.** **Section 4. Registration procedures.** (1) In a court case, before a decree,
22 judgment, or order may be docketed, the parties to the action or their attorneys shall prepare, on a form
23 prescribed by the department, the abstract of a support order required under [section 3(3)] and deliver it
24 to the clerk of court whenever:

25 (a) a support order is entered or an existing order is modified after October 1, 1998;

26 (b) in an existing case not included under subsection (1)(a), the department has filed a notice of
27 IV-D services and a support order is established, modified, adjusted, terminated, or otherwise affected or
28 relief is granted from the support order; and

29 (c) in each case with a previously registered abstract, there is an action subsequent to registration
30 that establishes, modifies, adjusts, terminates, grants relief from, or otherwise affects the support order

in a registered case.

(2) The clerk of court shall deliver a completed abstract and copy of a non IV-D income-withholding order to the department within 5 working days of the receipt of an abstract or issuance of the non IV-D income-withholding order.

(3) (a) The department shall prepare and register abstracts of administrative support orders established by the department.

(b) For a foreign support order involving IV-D services from the department, the department shall attempt to acquire the information necessary for completion of the abstract from the person, court, or agency requesting IV-D services, and to the extent the information is provided, the department shall enter the information into the registry.

(4) As an alternative to the preparation and delivery of abstracts and non IV-D income-withholding orders to the department, the department may enter into cooperative agreements with district courts, clerks of court, or other appropriate agencies of this and other states to gather and transmit the information through electronic information networking systems.

NEW SECTION. Section 5. Centralized payment center -- mandatory payments to center. (1) Payments due under a support order must be paid through the department for processing and distribution to the person or agency entitled to receive the payment whenever:

- (a) the case is receiving IV-D services; or
- (b) the support obligation is payable through non IV-D income withholding.

(2) A support order entered or modified in this state after October 1, 1998, that excludes the obligor from paying support through income withholding must provide that:

(a) if the case is or later becomes a IV-D case or if support becomes payable through IV-D or non IV-D income withholding, support payments must be paid through the department; and

(b) a payment that is not made to the department does not constitute payment of support or credit toward satisfaction of the support obligation UNLESS THE PAYMENT IS VERIFIED BY THE DEPARTMENT TO ITS SATISFACTION.

(3) (a) If a support order does not include the provisions required by subsection (2) or directs payment of support to a payee other than the department, the department may give written notice to the obligor and obligee directing or redirecting payments to the department. After receipt of the notice,

1 payment other than as directed does not constitute payment of support or credit toward satisfaction of the
2 support obligation.

3 (b) An obligor who redirects payments to the department is not liable to the obligee or answerable
4 to the court for not making payments as directed by the court.

5 (c) While support is required to be paid through the department, the notice directing or redirecting
6 payments to the department may not be superseded by any subsequent order of a court or agency directing
7 the obligor to make payments other than to the department.

8 (4) After the obligor has been ordered or directed to make payments to the department under this
9 section, the obligor shall make the payments to the department and is not entitled to credit against a
10 support obligation for payment made to a person or agency other than the department.

11 (5) (a) When the obligor is paying support through IV-D or non IV-D income withholding, the
12 income-withholding order must direct the payor to make the payments through the department.

13 (b) If a payor is directed by the income-withholding order to make payments to a payee other than
14 the department, the department may redirect the payments to the department by written order to the
15 employer or payor. The order supersedes any prior, inconsistent court or agency order.

16 (c) For as long as income withholding is appropriate to the case, the directive to the payor to make
17 payments to the department may not be superseded by any subsequent order of a court or agency directing
18 payments to any other payee.

19 (6) Payments of support that are received by the department in interstate cases or as the result
20 of a writ of execution, warrant for distraint, state and federal tax offset, or similar enforcement remedy
21 must be processed through the case management and payment processing unit.

22 (7) (a) If, through a private collection action, an obligee obtains a payment of support that must
23 be processed and distributed through the case management and payment processing unit, the obligee shall
24 forward the payment to the department within 5 working days of the receipt of the payment.

25 (b) If the department takes an enforcement action against the obligor because the obligee failed
26 to timely forward a payment of support under subsection (7)(a), the obligee is liable in a civil action to the
27 obligor for the amount that should have been forwarded to the department.

28 (8) (a) Payments made to the department under this section must be by cash, personal or business
29 check, money order, automatic bank account withdrawal, certified funds, electronic funds transfer services,
30 or any other means acceptable to the department.

(b) Payments may not be credited to the obligor's child support obligation until actually received by the department.

(c) The withholding of income by a payor or employer under an order to withhold issued under Title 40, chapter 5, part 3 or 4, is not alone sufficient for credit against an obligor's support obligation. Payments withheld from an obligor's income that are not actually received by the department may not be credited to the obligor's child support obligation. The payor or employer is liable to the obligor in a civil action initiated by the obligor for the amount withheld but not paid to the department.

(d) A check presented to the department as payment, whether by the obligor, the obligor's employer, or another payor on the obligor's behalf, that is dishonored by the issuing bank may not be credited to the obligor's child support obligation.

(e) A payment made out to or delivered to any other person or agency other than to the department may not be credited to the obligor's support obligation.

(9) An uncredited payment under this section is considered as still owed by the obligor and may be collected using any remedy available under law.

NEW SECTION. **Section 6. Distribution of payments.** (1) Support payments processed through the case processing unit must be promptly disbursed unless one of the following circumstances or a similar circumstance prevents prompt distribution:

(a) the location of the obligee is unknown;

(b) the support debt is in litigation or, in an income-withholding case, the income-withholding action is contested; or

(c) the department receives a payment that does not include sufficient information to identify the case or the obligee.

(2) A disbursement must comply with department rules for distribution in IV-D cases.

(3) If the department is unable to make a distribution because the obligee's location is unknown, the department shall return the payment to the obligor.

(4) If a payment properly distributed under this section is later determined by a court or by department decision to be refundable to the obligor for any reason, except for when the department is the obligee, the department need not pay the refund or recover the refunded amount from the obligee or from any person or agency to whom the amount was distributed.

(5) If the department distributes a support payment in error or if a distribution is made to a person obligee, or agency not entitled to retain the distributed amount, the department may obtain restitution by means of a setoff against future payments, including arrears payments, received on behalf of the person obligee, or agency. A setoff against future payments of current support is limited to 10% of the payment.

NEW SECTION. Section 7. Monitor payments -- enforcement. The department shall monitor all IV-D cases in the case registry and payment processing unit to promptly identify failures to make timely payment of support. If payment is not timely made, the department may:

(1) determine why a timely payment was not received and take any action the department considers appropriate if there is an order to withhold income issued to a current payor;

(2) promptly transmit an income-withholding order to the obligor's payor if the obligor is not currently subject to income withholding; or

(3) promptly transmit an income-withholding order upon receipt of information identifying a payor if a payor was formerly unknown; and

(4) take any additional enforcement action the department considers appropriate in all cases with an identified delinquency.

NEW SECTION. Section 8. Certification of records. (1) Copies, including optically scanned copies of support payment records, abstracts, and any supporting documents maintained by the case registry and payment processing unit, when certified by a designated employee of the department, must, without further proof or foundation, be admitted into evidence in any legal proceedings.

(2) Support payment records for a case maintained in the case registry and payment processing unit constitute prima facie evidence of the amount of support paid and arrearages that have accrued since the department began to process and monitor support payments through the unit.

(3) Copies of judicial orders and other documents on file with a clerk of court, when transmitted to the department by the clerk by facsimile or other electronic means, are rebuttably presumed to be true and correct copies of the original documents and may be offered into evidence, without authentication or verification, in a department proceeding under [sections 1 through 44] 9]. A person contesting the accuracy **AUTHENTICITY** of the document may rebut the presumption with a certified copy of the original document.

NEW SECTION. Section 9. Directory of new hires -- employer reporting requirements -- penalties.

(1) (a) ~~An employer doing business in the state shall report to the department the hiring or rehiring of an employee to whom the employer anticipates paying income.~~

(b) ~~An employer shall report the hiring or rehiring of an employee by submitting a copy of the employee's completed W-4 form or, AT THE OPTION OF THE EMPLOYER, its informational equivalent as may be approved by the department OR ANY OTHER FORMAT AGREED TO BY THE DEPARTMENT. The report must include the employee's name, date of hire, social security number, and residential and mailing addresses, and the name, address, and federal identification number of the employer. The report may include the employee's date of birth.~~

(c) ~~If an employer provides health or medical insurance coverage for an employee and the coverage may be extended to the employee's children, the employer may, along with the date the employee becomes eligible for coverage, provide that information as part of the new hire report under subsection (1)(b).~~

(2) ~~Transmission of the reports must be by first-class mail, electronic or magnetic transmission, including facsimile transmission, or any other format agreed to by the department. Written reports must be submitted within 20 days of the employee's date of hire or rehire. Reports transmitted electronically or magnetically may be made by two transmissions monthly, if necessary, not less than 12 or more than 16 days apart.~~

(3) ~~An employer who has employees in two or more states and who transmits new hire reports electronically or magnetically may comply with this section by designating one of the states in which there is an employee and transmitting the report of new hires to that state. A multistate employer who elects to report to only one state shall give written notice of the state to which the employer will transmit new reports. As required by 42 U.S.C. 653a (b)(1)(B), this notice must be transmitted to the secretary of the federal department of health and human services.~~

(4) (a) ~~An employer failing to report is subject to a civil penalty of up to \$24 \$3 for each day that EMPLOYEE FOR WHOM the employer fails to provide the report.~~

(b) ~~If the failure is the result of a conspiracy between the employer and the employee to not supply the report or to supply a false or incomplete report, the employer is subject to an additional penalty of \$495 \$25 for each violation.~~

(c) ~~An amount imposed as a penalty may be collected by any remedy available to the department for the enforcement of child support obligations.~~

~~(5) An employer providing reports is not liable to the employee or contractor for the disclosure or any subsequent use by the processing center of the information.~~

~~(6) An employer required to report under this section may charge each reported employee a fee not to exceed \$5 for each report to cover the cost of reporting. The fee may be withheld from payment of wages or other income to the employee.~~

NEW SECTION. Section 9. Information and records -- disclosure. ~~(1) Information in the case registry and payment processing unit that contains the social security number, residential address, income sources, and employers of an obligee or obligor and the employee W-4 forms or similar forms transmitted to the department is private and confidential and may be disclosed only to:~~

~~(a)(1) courts, tribunals, and administrative agencies in this and any other AGENCY OF ANOTHER state having appropriate jurisdiction over child support, custody, visitation, and welfare PURSUANT TO 42 U.S.C. 651, ET SEQ., AND WITH CONFIDENTIALITY PROVISIONS EQUAL TO OR GREATER THAN THOSE PROVIDED BY THE DEPARTMENT;~~

~~(b)(2) public assistance and medicaid agencies and the revenue, workers' compensation, and employment security programs of this or any other state for the purpose of determining eligibility, continued eligibility, or fraud by programs operated by those agencies and programs;~~

~~(c)(3) the obligor or obligee who is the subject of the information;~~

~~(d)(4) the state vital statistics agency for the purposes of 50-15-302; and~~

(5) THE DEPARTMENT OF REVENUE.

~~(e) a person, agency, or entity if the release is consistent with 40-5-206 and also consistent with any allowable purpose under Title IV-D and other state and federal law pertaining to privacy safeguards and confidentiality of the information.~~

~~(2) All other information and records in the case registry and payment processing unit may be disclosed upon request of any person or agency, but a person or agency may not make use of the information or compile a list of obligee or obligor names for any commercial or political purpose.~~

NEW SECTION. Section 11. Automated access to financial records -- confidentiality -- no liability. ~~(1) For the purposes of this section, unless the context otherwise indicates, the following definitions apply:~~

~~(a) "Account" means a savings, checking, deposit and withdrawal, demand deposit, money market,~~

profit and loss, or time deposit account opened by a depositor in a financial institution.

(b) "Depositor" means a person, share account holder, sole proprietor, or joint owner of an account in a financial institution in this state.

(c) "Financial institution" means a corporation incorporated to conduct the business of receiving money on deposit or transacting a trust or investment business, as referred to in 32-1-102, including a commercial bank as defined in 32-1-105, savings bank as defined in 32-1-106, trust company as defined in 32-1-107, and investment company as defined in 32-1-108. The term also means a building and loan association as defined in 32-2-101, credit union as defined in 32-3-102, Montana development corporation as referred to in 32-4-101, or consumer type loan business as defined in 32-5-102;

(I) A DEPOSITORY INSTITUTION, AS DEFINED IN SECTION 3(C) OF THE FEDERAL DEPOSIT INSURANCE ACT, 12 U.S.C. 1813(C);

(II) AN INSTITUTION AFFILIATED PARTY, AS DEFINED IN THE FEDERAL DEPOSIT INSURANCE ACT, 12 U.S.C. 1813(U);

(III) ANY FEDERAL CREDIT UNION OR STATE CREDIT UNION, AS DEFINED IN SECTION 101 OF THE FEDERAL CREDIT UNION ACT, 12 U.S.C. 1752, INCLUDING AN INSTITUTION AFFILIATED PARTY OF SUCH A CREDIT UNION, AS DEFINED IN SECTION 206(R) OF THE ACT, 12 U.S.C. 1786(R); AND

(IV) ANY BENEFIT ASSOCIATION, INSURANCE COMPANY, SAFE DEPOSIT COMPANY, MONEY MARKET MUTUAL FUND, OR SIMILAR ENTITY AUTHORIZED TO DO BUSINESS IN THE STATE.

(d) "Obligor" means a person who owes a debt for child, spousal, or medical support as determined by the department or as specified by order of a tribunal of competent jurisdiction, the amount of which exceeds \$500 or a total of 3 months debt, whichever is less.

(2) (a) Upon written request from the department, a financial institution shall run a data match of the department's list of obligors with the financial institution's depositors and provide the information in a computer OR OTHER REASONABLE format accessible by the financial institution. In the alternative, upon a showing by the financial institution of efficiency, the financial institution may provide the department with a list of the financial institution's depositors in a computer OR OTHER REASONABLE format accessible by the department for a data match to the department's list of obligors. The department may not request the information referred to in this subsection from a financial institution more than once in each calendar quarter.

(b) The information on an obligor found to be a depositor at a financial institution must include the

1 obligor's full name, social security number, and account number. If the information is normally kept by the
2 financial institution, it must also include the mailing address, employment, and any other identifying
3 information on the obligor.

4 (c) The financial institution shall provide the requested information within 30 days of the request
5 from the department.

6 (3) The department shall run a computer match of all obligors with the information from the
7 financial institution required in subsection (2) within 30 days. A match between an obligor and the
8 information from the financial institution must be compiled by the department and returned to the financial
9 institution for additional information, including, but not limited to:

10 (a) verification of the obligor's full name and social security number;

11 (b) the financial institution's account number;

12 (c) the nature of the account or accounts held by the obligor;

13 (d) the funds available in the account less any preexisting encumbrance held by the financial
14 institution; and

15 (e) any taxes, penalties, interest, or other costs to be legally imposed on the account if the account
16 is accessed prior to a maturity date.

17 (4) The amounts available in an obligor's account do not include amounts available pursuant to
18 overdraft coverage offered by the financial institution.

19 (5) The financial institution shall honor a subsequent appropriate lien from the department sent to
20 the financial institution.

21 (6) (a) A financial institution receiving a data request, data match, or lien from the department may
22 not provide notice to an obligor identified in the information submitted to the department. Failure to provide
23 notice does not constitute a violation of the financial institution's duty of good faith to its customers.

24 (b) A notice given by a financial institution to an obligor identified by the department subjects the
25 financial institution to the contempt authority of the department under 40-5-226.

26 (7) The department shall pay a financial institution a reasonable fee for providing the information
27 required in subsection (2), not to exceed the actual documented costs incurred by the financial institution.

28 (8) Information requested by the department and provided by a financial institution under this
29 section is confidential and may be used only for IV-D purposes. Use of information for any other purpose
30 without the authorization of the department subjects the user to a civil penalty of not more than \$500 per

1 name per use.

2 ~~(9) A financial institution is not liable to a person for:~~

3 ~~(a) a disclosure of information to the department under this section;~~

4 ~~(b) encumbering or surrendering assets held by the financial institution in response to a notice of~~
5 ~~lien or levy issued by the department; or~~

6 ~~(c) any other action UNDER THIS SECTION taken in good faith to comply with the requirements of~~
7 ~~this section AS LONG AS THE ACTION IS REASONABLE.~~

8
9 **NEW SECTION. Section 10. Order to seek employment.** (1) In a proceeding under this chapter
10 to enforce a support order, if an obligor claims inability to pay support because of unemployment or
11 underemployment, the department may order the obligor to seek suitable employment and make progress
12 reports on that activity to the department unless the obligor proves by a preponderance of the evidence
13 that:

14 (a) the obligor is engaged in diligent, bona fide efforts to seek suitable employment; or

15 (b) the obligor, due to illness, injury, or other incapacity, does not have the ability to seek
16 employment or to engage in work if employment is offered to the obligor.

17 (2) The seek-work order must direct the obligor to:

18 (a) seek employment within a specified amount of time;

19 (b) file a weekly report with the department showing at least five new attempts by the obligor to
20 find employment; and

21 (c) include in the report filed under subsection (2)(b) the name, address, and telephone number of
22 the employers with whom the obligor sought employment and the name of the individuals the obligor
23 contacted to inquire about or apply for employment.

24 (3) The order is effective for 6 months or until the obligor finds work, whichever occurs first.

25 (4) Failure to report or otherwise comply with a seek-work order, absent good cause, is evidence
26 of willful nonpayment of child support for which the obligor may be determined to have committed the
27 offense of nonsupport under 45-5-621 or may be held in civil contempt under Title 40, chapter 5, part 6.
28 The department may enforce the order as provided in 40-5-226.

29 (5) For the purpose of this section, "suitable employment" is employment commensurate with the
30 obligor's education, training, professional or occupational qualifications, job skills, work history, and the

1 availability of employment opportunities in the community, or in the absence of commensurate employment
2 AVAILABLE WITHIN A REASONABLE RANGE OF THE OBLIGOR'S AREA OF RESIDENCE, suitable
3 employment is any employment that the obligor is capable of performing.

4
5 NEW SECTION. Section 11. Income-withholding orders of another state -- employer compliance
6 -- employer immunity -- penalties for noncompliance. (1) An income-withholding order issued in another
7 state may be sent to the person or entity defined as the obligor's employer under the income-withholding
8 laws of this state without first filing a petition or comparable pleading or registering the order with a tribunal
9 of this state.

10 (2) ~~(a)~~ (A) Upon receipt of an income-withholding order, the obligor's employer shall immediately
11 provide a copy of the order to the obligor AND, IF THE EMPLOYER ELECTS UNDER SUBSECTION (3) TO
12 FORWARD THE FUNDS TO THE DEPARTMENT FOR DISTRIBUTION, TO THE DEPARTMENT.

13 ~~(b) The employer shall treat an income-withholding order issued in another state that appears~~
14 ~~regular on its face as if it had been issued by a tribunal of this state.~~

15 (B) THE EMPLOYER SHALL TREAT AN INCOME-WITHHOLDING ORDER ISSUED IN ANOTHER
16 STATE THAT APPEARS REGULAR ON ITS FACE AS IF IT HAD BEEN ISSUED BY A TRIBUNAL OF THIS
17 STATE. AN EMPLOYER MAY CONTACT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
18 TO DETERMINE WHETHER THE WITHHOLDING ORDER WAS ISSUED BY THE APPROPRIATE AUTHORITY.

19 (3) Except as provided by subsections (4) and (5), the employer shall withhold ~~and~~ THE FUNDS
20 AND EITHER distribute the funds OR FORWARD THE FUNDS TO THE DEPARTMENT TO BE DISTRIBUTED
21 BY THE DEPARTMENT as directed in the income-withholding order by complying with the terms of the
22 order that specify:

23 (a) the duration and the amount of periodic payments of current child support, stated as a sum
24 certain;

25 (b) the person or agency designated to receive payments and the address to which the payments
26 are to be forwarded;

27 (c) medical support, whether in the form of periodic cash payment, stated as a sum certain, or by
28 ordering the obligor to provide health insurance coverage for the child under a policy available through the
29 obligor's employment;

30 (d) the amount of periodic payments of fees and costs for a support enforcement agency, the

issuing tribunal, and the obligee's attorney, stated as sums certain; and

(e) the amount of periodic payments of arrears and interest on arrears, stated as sums certain.

(4) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(a) the employer's fee for processing an income-withholding order;

(b) the maximum amount permitted to be withheld from the obligor's income; and

(c) the times within which the employer must implement the income-withholding order and forward the child support payment.

(5) An obligor's employer who receives multiple income-withholding orders with respect to the earnings of the obligor satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

(6) An employer who complies with an income-withholding order issued in another state in accordance with this section is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

(7) An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

(8) (a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state in the same manner as if the order had been issued by a tribunal of this state. Choice of law under 40-5-187 applies to the contest.

(b) The obligor shall give notice of the contest to:

(i) a support enforcement agency providing services to the obligee;

(ii) each employer that has directly received an income-withholding order; and

(iii) the person or agency designated to receive payments in the income-withholding order or, if a person or agency is not designated, to the obligee.

NEW SECTION. Section 12. Execution or withholding for support obligation. (1) Benefits in the retirement systems provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income withholding for the payment of a participant's support obligation.

(2) For purposes of this section:

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in [section ~~43~~ 11].

(c) "Participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system.

(4) The execution or income-withholding order may only provide for payment as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments under this section may be further limited only to a specified maximum time or the life of a specified participant. Payments may also be limited to a specific amount per month if the number of payments is specified.

1 **NEW SECTION. Section 13. Execution or withholding for support obligation.** (1) Benefits in the
2 retirement system are subject to execution and income withholding for the payment of a participant's
3 support obligation.

4 (2) For purposes of this section:

5 (a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the
6 department of public health and human services when providing support enforcement services under Title
7 IV-D of the Social Security Act.

8 (b) "Income withholding" means an income-withholding order issued under the provisions of Title
9 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in [section
10 13].

11 (c) "Participant" means a member or an actual or potential beneficiary, survivor, or contingent
12 annuitant of a retirement system designated pursuant to this chapter.

13 (d) "Support obligation" has the meaning provided in 40-5-403 for support order.

14 (3) The execution or income-withholding order may not require:

15 (a) a type or form of benefit, option, or payment not available to the affected participant under the
16 retirement system; or

17 (b) an amount or duration of payment greater than that available to a participant under the
18 retirement system.

19 (4) The execution or income-withholding order may only provide for payment as follows:

20 (a) Service retirement benefit payments or withdrawals of member contributions may be
21 apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of
22 no more than the amount payable to the participant.

23 (b) The maximum amount of disability or survivorship benefits that may be apportioned and paid
24 under this section is the monthly benefit amount that would have been payable on the date of termination
25 of service if the member had retired without disability or death.

26 (c) Retirement benefit adjustments for which a participant is eligible after retirement may be
27 apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the
28 same ratio as existing benefit payments.

29 (d) Payments must be limited to the life of the appropriate participant. The duration of payments
30 under this section may be further limited only to a specified maximum time or the life of a specified

1 participant. Payments may also be limited to a specific amount per month if the number of payments is
2 specified.

3
4 **Section 14.** Section 19-2-1004, MCA, is amended to read:

5 **"19-2-1004. Exemption from taxes and legal process.** Except as provided in 19-2-907 and [section
6 14] 12], the right of a person to any benefit or payment from the retirement systems and the money in the
7 pension trust funds is not:

8 (1) subject to execution, garnishment, attachment, or any other process;

9 (2) subject to state, county, or municipal taxes except for:

10 (a) a benefit or annuity received in excess of \$3,600 or adjusted by an amount determined
11 pursuant to 15-30-111(2)(c)(ii); or

12 (b) a refund of a member's regular contributions picked up by an employer after June 30, 1985,
13 as provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, or 19-13-601; or

14 (3) assignable except as specifically provided in this chapter."
15

16 **Section 15.** Section 19-18-612, MCA, is amended to read:

17 **"19-18-612. Protection of benefits from legal process and taxation -- nonassignability.** (1) Any
18 Except for execution or withholding for the payment of child support or for the payment of spousal support
19 for a spouse or former spouse who is the custodial parent of the child, payments made or to be made under
20 this chapter are not subject to judgments, garnishment, execution, or other legal process. A person entitled
21 to a pension may not assign the right, and the association and trustees may not recognize any assignment
22 or pay over any sum ~~so~~ assigned.

23 (2) The first \$3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received
24 under this part is exempt from state, county, and municipal taxation."
25

26 **Section 16.** Section 19-19-504, MCA, is amended to read:

27 **"19-19-504. Protection of benefits from legal process and taxation.** (1) The Except for execution
28 or withholding for the payment of child support or for the payment of spousal support for a spouse or
29 former spouse who is the custodial parent of the child, the benefits provided for in this part are not subject
30 to execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law

and are unassignable except as specifically provided in 19-19-505.

(2) The first \$3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation."

Section 17. Section 19-20-706, MCA, is amended to read:

"19-20-706. Exemption from taxation and legal process. Except as provided in 19-20-305 and ~~[section 15]~~ 13], the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

(1) exempted from any state, county, or municipal tax of the state of Montana except for:

(a) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-20-602;

(2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and

(3) unassignable except as specifically provided in this chapter."

Section 18. Section 19-21-212, MCA, is amended to read:

"19-21-212. Exemption from taxation, legal process, and assessments. ~~All~~ Except for execution or withholding for the payment of child support or for the payment of spousal support if the child support obligation also includes support for a spouse or former spouse who is the custodial parent of the child, contracts, benefits, and contributions under the optional retirement program and the earnings ~~thereon~~ on the contributions are:

(1) except for a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii), exempt from any state, county, or municipal tax;

(2) not subject to execution, garnishment, attachment, or other process;

(3) not covered or assessable by an insurance guaranty association; and

(4) unassignable except as specifically provided in the contracts."

1 **Section 19.** Section 25-13-608, MCA, is amended to read:

2 **"25-13-608. Property exempt without limitation -- exceptions.** (1) A judgment debtor is entitled
3 to exemption from execution of the following:

4 (a) professionally prescribed health aids for the judgment debtor or a dependent of the judgment
5 debtor;

6 (b) benefits the judgment debtor has received or is entitled to receive under federal social security
7 or local public assistance legislation, except as provided in subsection (2);

8 (c) veterans' benefits, except as provided in subsection (2);

9 (d) disability or illness benefits, except as provided in subsection (2);

10 (e) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or
11 will be used to pay for the care;

12 (f) maintenance and child support; and

13 (g) a burial plot for the judgment debtor and ~~his~~ the debtor's family.

14 (2) Veterans' and social security legislation benefits based upon remuneration for employment, as
15 defined in 42 U.S.C. 662(f), and disability benefits are not exempt from execution if the debt for which
16 execution is levied is for:

17 (a) child support; or

18 (b) maintenance to be paid to a spouse or former spouse if the spouse or former spouse is the
19 custodial parent of a child for whom child support is owed or owing and the judgment debtor is the parent
20 of the child."

21
22 ~~**Section 22.** Section 37-1-307, MCA, is amended to read:~~

23 ~~**"37-1-307. Board authority.** (1) A board may:~~

24 ~~(a) hold hearings as provided in this part;~~

25 ~~(b) issue subpoenas and administer oaths in connection with investigations and disciplinary~~
26 ~~proceedings under this part. Subpoenas must be relevant to the complaint, issued by a majority vote of~~
27 ~~board members not serving on the screening panel described in subsection (1)(e), and signed by the~~
28 ~~presiding officer of the board. Subpoenas may be enforced as provided in 2-4-104.~~

29 ~~(c) authorize depositions and other discovery procedures under the Montana Rules of Civil~~
30 ~~Procedure in connection with an investigation, hearing, or proceeding held under this part;~~

(d) ~~compel attendance of witnesses and the production of documents. Subpoenas may be enforced as provided in 2-4-104.~~

(e) ~~establish a screening panel that determines whether there is reasonable cause to believe that a licensee has violated a statute or rule justifying disciplinary proceedings. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.~~

(f) ~~grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.~~

(2) ~~Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding its licensees and license applicants.~~

(3) ~~Each board shall require a license applicant to provide the applicant's social security number as a part of the application."~~

Section 23. ~~Section 40-1-107, MCA, is amended to read:~~

~~"40-1-107. Form of application, license, marriage certificate, and consent. (1) The director of the department of public health and human services shall prescribe the form for an application for a marriage license, which must include the following information:~~

~~(a) name, sex, address, social security number, and date and place of birth of each party to the proposed marriage;~~

~~(b) if either party was previously married, the party's name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;~~

~~(c) name and address of the parents or guardian of each party;~~

~~(d) whether the parties are related to each other and, if so, their relationship; and~~

~~(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.~~

~~(2) The director of the department of public health and human services shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage."~~

Section 24. ~~Section 40-4-105, MCA, is amended to read:~~

1 ~~"40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses. (1) The~~
2 ~~verified petition in a proceeding for dissolution of marriage or legal separation shall must allege that the~~
3 ~~marriage is irretrievably broken and shall must set forth:~~

4 ~~(a) the age, occupation, and residence of each party and his the party's length of residence in this~~
5 ~~state;~~

6 ~~(b) the date of the marriage and the place at which it was registered;~~

7 ~~(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably~~
8 ~~broken in that either:~~

9 ~~(i) the parties have lived separate and apart for a period of more than 180 days next preceding the~~
10 ~~commencement of this proceeding; or~~

11 ~~(ii) there is serious marital discord which adversely affects the attitude of one or both of the parties~~
12 ~~towards the marriage, and there is no reasonable prospect of reconciliation;~~

13 ~~(d) the names, ages, and addresses of all living children of the marriage and whether the wife is~~
14 ~~pregnant;~~

15 ~~(e) any arrangements as to support, custody, and visitation of the children and maintenance of a~~
16 ~~spouse; and~~

17 ~~(f) the relief sought.~~

18 ~~(2) Either or both parties to the marriage may initiate the proceeding.~~

19 ~~(3) If a proceeding is commenced by one of the parties, the other party must be served in the~~
20 ~~manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service~~
21 ~~file a verified response. No A decree may not be entered until 20 days after the date of service.~~

22 ~~(4) Previously existing defenses to divorce and legal separation, including but not limited to~~
23 ~~condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.~~

24 ~~(5) The court may join additional parties proper for the exercise of its authority to implement this~~
25 ~~chapter.~~

26 ~~(6) The social security number, IF KNOWN, of a person subject to a decree of dissolution or a~~
27 ~~support order must be recorded in the records relating to the matter."~~

28
29 Section 20. Section 40-4-204, MCA, is amended to read:

30 "40-4-204. Child support -- orders to address health insurance -- withholding of child support. (1)

In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

- (a) the financial resources of the child;
- (b) the financial resources of the custodial parent;
- (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;
- (d) the physical and emotional condition of the child and the child's educational and medical needs;
- (e) the financial resources and needs of the noncustodial parent;
- (f) the age of the child;
- (g) the cost of day care for the child;
- (h) any custody arrangement that is ordered or decided upon; and
- (i) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

1 (d) Child support obligations established under this section are subject to the registration and
2 processing provisions of [sections 1 through 11] 9).

3 (4) Each temporary or final district court judgment, decree, or order establishing a child support
4 obligation under this title and each modification of a final order for child support must include a medical
5 support order as provided for in Title 40, chapter 5, part 8.

6 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception
7 is included in the support order, a support obligation established by judgment, decree, or order under this
8 section, whether temporary or final, and each modification of an existing support obligation under 40-4-208
9 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part
10 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides
11 for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the
12 payment of support without need for an amendment to the support order or for any further action by the
13 court.

14 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order
15 must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's
16 income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to
17 include a warning statement in a judgment or order does not preclude the use of withholding procedures.

18 (c) If a support order subject to income withholding is expressed in terms of a monthly obligation,
19 the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's
20 regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this
21 section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's
22 monthly support obligation if the excess support is a result of annualized withholding.

23 (d) If an obligor is exempted from paying support through income withholding, the support order
24 must include a requirement that whenever the case is receiving services under Title IV-D of the Social
25 Security Act, support payments must be paid through the department of public health and human services
26 as provided in [section 5].

27 (6) (a) For the purposes of income withholding under subsection (5), each Each district court
28 judgment, decree, or order that establishes paternity or establishes or modifies a child support obligation
29 must include a provision requiring the parent obligated to pay support to inform parties to promptly file with
30 the court and, if the department of public health and human services is providing services under Title IV-D

of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following to update, as necessary, information on:

(i) the party's identity, residential and mailing addresses, telephone number, ~~social security number,~~ and driver's license number;

~~(a)(ii) the name, and address, and telephone number of the parent's current party's employer; and~~

~~(b) whether the parent has access to health insurance through an employer or other group; and~~

~~(c) if insurance coverage is available, the health insurance policy information.~~

(iii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the names of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the party's employer.

(B) THE COURT SHALL KEEP THE INFORMATION PROVIDED UNDER SUBSECTION (6)(A) CONFIDENTIAL EXCEPT THAT THE INFORMATION MAY BE PROVIDED TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR USE IN ADMINISTERING TITLE IV-D OF THE SOCIAL SECURITY ACT.

~~(b)(C) The order must also require that in any subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or the department of public health and human services, if the department is providing services under Title IV-D of the Social Security Act, may consider due process requirements for notice and service of process met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the court.~~

(7) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of public health and human services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

(8) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support obligation to be paid, without need for further order of the court, to:

(i) the legal custodian of the minor child;

(ii) ~~(A) any other to a person, organization, or agency having legal to which the legal custodian voluntarily or involuntarily relinquished physical custody of the minor child under a legal assignment of rights; or~~

~~(B) the court for the benefit of the minor child;~~

(iii) any other person, organization, or agency ~~designated as caretaker of the minor child by agreement of the legal custodian~~ entitled by law, assignment, or similar reason to receive or collect the child support obligation; ~~or~~

~~(iv) any assignee or other person, organization, or agency authorized to receive or collect child support.~~

(b) When the department of public health and human services is providing services under Title IV-D of the Social Security Act, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment.

~~(b)(c)~~ A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court.

(9) A JUDGMENT, DECREE, OR ORDER THAT ESTABLISHES OR MODIFIES A CHILD SUPPORT OBLIGATION MUST INCLUDE A PROVISION THAT IF A PARENT OR GUARDIAN IS THE OBLIGEE UNDER A CHILD SUPPORT ORDER AND IS OBLIGATED TO PAY A CONTRIBUTION FOR THE SAME CHILD UNDER 41-3-406, 41-5-403, OR 41-5-523, THE PARENT OR GUARDIAN ASSIGNS AND TRANSFERS TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES ALL RIGHTS THAT THE PARENT OR GUARDIAN MAY HAVE TO CHILD SUPPORT THAT ARE NOT OTHERWISE ASSIGNED UNDER 53-2-613.

Section 21. Section 40-4-206, MCA, is amended to read:

"40-4-206. Payment of maintenance or support to court -- handling fee of clerk. (1) Upon Except as provided in subsection (4), upon its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the clerk of the district court as trustee for remittance to the person entitled to receive the payments.

(2) The clerk of the district court shall maintain records of payments received by the clerk listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order. The clerk may charge the payor a handling fee of \$2 a payment, which must

be in addition to the payment. Any handling fee collected by the clerk under this subsection must be paid into the county general fund unless the county has a district court fund. If the county has a district court fund, the amount must be paid into ~~such~~ that fund.

(3) The parties affected by the order shall inform the clerk of the district court of any change of address or of other condition that may affect the administration of the order.

(4) When the department of public health and human services is providing services under Title IV-D of the Social Security Act or when income withholding is in effect in an order issued or modified after October 1, 1998, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment."

Section 22. Section 40-5-103, MCA, is amended to read:

"40-5-103. Definitions. (1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a child support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support":

(a) means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse; and

(b) includes an unsatisfied obligation to provide support.

(4) "Governor" includes an individual performing the functions of governor or the executive authority of any state covered by this part.

(5) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the state in which the child lived from birth with a parent or person acting as parent. A period of temporary absence of a parent or person acting as parent is counted as part of the 6-month or other period.

(6) "Income" includes:

(a) earnings or other periodic entitlements to money from any source; and

(b) any other property subject to withholding for support under the law of this state.

1 (7) "Income-withholding order" means an order or other legal process directed to an obligor's
2 employer, as provided in Title 40, chapter 5, parts 3 and 4, or by a tribunal of another state to withhold
3 support from the income of the obligor.

4 (8) "Initiating state" means a state ~~in~~ from which a proceeding is forwarded or in which a
5 proceeding is filed for forwarding to a responding state pursuant to this part or a law or procedure
6 substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform
7 Reciprocal Enforcement of Support Act, or a law or procedure substantially similar to either of those acts,
8 or pursuant to a proceeding initiated by the department of public health and human services under 40-5-263
9 is filed for forwarding to a responding state.

10 (9) "Initiating tribunal" means the authorized tribunal in an initiating state.

11 (10) "Issuing state" means the state in which a tribunal issues a support order or renders a
12 judgment determining parentage.

13 (11) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment
14 determining parentage.

15 (12) "Law" includes decisional and statutory law and rules and regulations having the force of law.

16 (13) "Obligee" means:

17 (a) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support
18 order has been issued or a judgment determining parentage has been rendered;

19 (b) a state or political subdivision to which the rights under a duty of support or a support order
20 have been assigned or that has independent claims based on financial assistance provided to an individual
21 obligee; or

22 (c) an individual seeking a judgment determining parentage of that individual's child.

23 (14) "Obligor" means an individual or the estate of a decedent:

24 (a) who owes or is alleged to owe a duty of support;

25 (b) who is alleged but has not been adjudicated to be a parent of a child; or

26 (c) who is liable under a support order.

27 (15) "Prosecuting attorney" means the public official in the appropriate place who has the duty to
28 enforce criminal laws relating to the failure to provide for the support of any person.

29 (16) "Register" means to file a support order or judgment determining parentage in the registry of
30 foreign support orders.

(17) "Registering tribunal" means a tribunal in which a support order is registered.

(18) "Responding state" means a state ~~to~~ in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this part or a law or procedure substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or a law or procedure substantially similar to either of those acts, or under a proceeding initiated by the department of public health and human services under 40-5-263.

(19) "Responding tribunal" means the authorized tribunal in a responding state.

(20) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

(21) "State" means a state of the United States, the District of Columbia, ~~the Commonwealth of~~ Puerto Rico, the Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes an Indian tribe ~~and includes a~~ or a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this part, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(22) (a) "Support enforcement agency" means a public official or agency authorized to seek:

- (i) enforcement of support orders or laws relating to the duty of support;
- (ii) establishment or modification of child support;
- (iii) a determination of parentage; or
- (iv) to locate obligors or their assets.

(b) Support enforcement agency includes:

- (i) in cases brought under ~~title~~ Title IV-D of the Social Security Act, the department of public health and human services; and
- (ii) in all other cases, the prosecuting attorney.

(23) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, that:

- (a) is for the benefit of a child, a spouse or a former spouse, or a state or political subdivision;
- (b) provides for monetary support, health care, arrearages, or reimbursement; and
- (c) may include related costs and fees, interest, income withholding, attorney fees, and other relief.

(24) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage."

1 **Section 23.** Section 40-5-149, MCA, is amended to read:

2 **"40-5-149. Continuing, exclusive jurisdiction.** (1) A tribunal of this state issuing a support order
3 consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:

4 (a) as long as this state remains the residence of the obligor, the individual obligee, or the child for
5 whose benefit the support order is issued; or

6 (b) until ~~each individual party has~~ all of the parties who are individuals have filed written consent
7 with the tribunal of this state for a tribunal of another state to modify the order and assume continuing,
8 exclusive jurisdiction.

9 (2) A tribunal of this state issuing a child support order consistent with the law of this state may
10 not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of
11 another state pursuant to this part or a law substantially similar to this part.

12 (3) If a child support order of this state is modified by a tribunal of another state pursuant to this
13 part or a law substantially similar to this part, a tribunal of this state loses its continuing, exclusive
14 jurisdiction with regard to prospective enforcement of the order issued in this state and may only:

15 (a) enforce the order that was modified as to amounts accruing before the modification;

16 (b) enforce nonmodifiable aspects of that order; and

17 (c) provide other appropriate relief for violations of that order that occurred before the effective
18 date of the modification.

19 (4) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of
20 another state that has issued a child support order pursuant to this part or a law substantially similar to this
21 part.

22 (5) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does
23 not create continuing, exclusive jurisdiction in the issuing tribunal.

24 (6) A tribunal of this state issuing a support order consistent with the law of this state has
25 continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support
26 obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another
27 state having continuing, exclusive jurisdiction over that order under the law of that state."
28

29 **Section 24.** Section 40-5-151, MCA, is amended to read:

30 **"40-5-151. Recognition of child support orders.** (1) If a proceeding is brought under this part and

1 only one tribunal has issued a child support order, the order of that tribunal controls and must be
2 recognized.

3 ~~(1)(2)~~ If a proceeding is brought under this part and ~~one~~ two or more child support orders have been
4 issued ~~in~~ by tribunals of this state or another state with regard to ~~an~~ the same obligor and a child, a tribunal
5 of this state shall apply the following rules in determining which order to recognize for purposes of
6 continuing, exclusive jurisdiction:

7 ~~(a) If only one tribunal has issued a child support order, the order of that tribunal must be~~
8 ~~recognized.~~

9 ~~(b)(a)~~ If ~~two or more tribunals have issued child support orders for the same obligor and child and~~
10 only one of the tribunals would have continuing, exclusive jurisdiction under this part, the order of that
11 tribunal controls and must be recognized.

12 ~~(c)(b)~~ If ~~two or more tribunals have issued child support orders for the same obligor and child and~~
13 more than one of the tribunals would have continuing, exclusive jurisdiction under this part, an order issued
14 by a tribunal in the current home state of the child controls and must be recognized. However, if an order
15 has not been issued in the current home state of the child, the order most recently issued controls and must
16 be recognized.

17 ~~(d)(c)~~ If ~~two or more tribunals have issued child support orders for the same obligor and child and~~
18 none of the tribunals would have continuing, exclusive jurisdiction under this part, the tribunal of this state
19 ~~may~~ having jurisdiction over the parties shall issue a child support order, which controls and must be
20 recognized.

21 (3) If two or more child support orders have been issued for the same obligor and child and if the
22 obligor or the individual obligee resides in this state, a party may request a tribunal of this state to
23 determine which order controls and must be recognized under subsection (2). The request must be
24 accompanied by a certified copy of each support order in effect. The requesting party shall give notice of
25 the request to each party whose rights may be affected by the determination.

26 ~~(2)(4)~~ The tribunal that ~~has issued an~~ the controlling order recognized under subsection subsections
27 (1) through (3) is the tribunal ~~having that has~~ continuing, exclusive jurisdiction under 40-5-149.

28 (5) A tribunal of this state that determines, by order, the identity of the controlling order under
29 subsection (2)(a) or (2)(b) or that issues a new controlling child support order under subsection (2)(c) shall
30 state in that order the basis upon which the tribunal made its determination.

1 (6) Within 30 days after issuance of the order determining the identity of the controlling order, the
2 party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier
3 order of child support. A party who obtains the order and fails to file a certified copy is subject to
4 appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not
5 affect the validity or enforceability of the controlling order."

6
7 ~~Section 30. Section 40-5-158, MCA, is amended to read:~~

8 ~~"40-5-158. Proceedings under this part. (1) Except as otherwise provided in this part, 40-5-158~~
9 ~~through 40-5-166, 40-5-170 through 40-5-178, 40-5-180, and 40-5-183 apply to all proceedings under~~
10 ~~this part.~~

11 ~~(2) This part provides for the following proceedings:~~

12 ~~(a) establishment of an order for spousal support or child support pursuant to 40-5-179;~~

13 ~~(b) enforcement of a support order and income withholding order of another state without~~
14 ~~registration;~~

15 ~~(c) registration of an order for spousal support or child support of another state for enforcement~~
16 ~~pursuant to 40-5-184 through 40-5-195;~~

17 ~~(d) modification of an order for child support or spousal support issued by a tribunal of this state~~
18 ~~pursuant to 40-5-147 through 40-5-150;~~

19 ~~(e) registration of an order for child support of another state for modification pursuant to 40-5-184~~
20 ~~through 40-5-195;~~

21 ~~(f) determination of parentage pursuant to 40-5-196; and~~

22 ~~(g) assertion of jurisdiction over nonresidents pursuant to 40-5-145 and 40-5-146.~~

23 ~~(3) If the tribunal is the department of public health and human services, this part includes the~~
24 ~~administrative remedies under this chapter.~~

25 ~~(4) An individual or a support enforcement agency may commence a proceeding authorized under~~
26 ~~this part by filing a petition in an appropriate initiating tribunal for forwarding to a responding tribunal or~~
27 ~~by filing a petition or a comparable pleading directly in a tribunal of another state that has or can obtain~~
28 ~~personal jurisdiction over the respondent."~~

29
30 Section 25. Section 40-5-161, MCA, is amended to read:

1 **"40-5-161. Duties of initiating tribunal.** (1) Upon the filing of a petition authorized by this part,

2 an initiating tribunal shall forward three copies of the petition and its accompanying documents:

3 (a) to the responding tribunal or appropriate support enforcement agency in the responding state;

4 or

5 (b) if the identity of the responding tribunal is unknown, to the state information agency of the
6 responding state, with a request that they be forwarded to the appropriate tribunal and that receipt be
7 acknowledged.

8 (2) The department of public health and human services is the initiating tribunal for any action or
9 proceeding that may be brought under Title 40, chapter 5, parts 2, 4, and 5. In all other cases, the district
10 court is the initiating tribunal.

11 (3) If a responding state has not enacted the Uniform Interstate Family Support Act or another law
12 OR PROCEDURE substantially similar to that act, a tribunal of this state may issue a certificate or other
13 documents and make findings required by the law OR PROCEDURE of the responding state. If the
14 responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide
15 other documents necessary to satisfy the requirements of the responding state."

16
17 **Section 26.** Section 40-5-162, MCA, is amended to read:

18 **"40-5-162. Duties and powers of responding tribunal.** (1) When a responding tribunal of this state
19 receives a petition or comparable pleading from an initiating tribunal or directly pursuant to 40-5-158(4),
20 it shall cause the petition or pleading to be filed and notify the petitioner ~~by first-class mail~~ where and when
21 it was filed.

22 (2) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or
23 more of the following:

24 (a) issue or enforce a support order, modify a child support order, or render a judgment to
25 determine parentage;

26 (b) order an obligor to comply with a support order, specifying the amount and the manner of
27 compliance;

28 (c) order income withholding;

29 (d) determine the amount of any arrearages and specify a method of payment;

30 (e) enforce orders by use of civil or criminal contempt, or both;

1 (f) set aside property for satisfaction of the support order;

2 (g) place liens and order execution on the obligor's property;

3 (h) order an obligor to keep the tribunal informed of the obligor's current residential address,
4 telephone number, employer, address of employment, and telephone number at the place of employment;

5 (i) issue a bench warrant for an obligor who has failed, after proper notice, to appear at a hearing
6 ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal
7 warrants;

8 (j) order the obligor to seek appropriate employment by specified methods;

9 (k) award reasonable attorney fees and other fees and costs; and

10 (l) grant any other available remedy.

11 (3) A responding tribunal of this state shall include in a support order issued under this part or in
12 the documents accompanying the order the calculations on which the support order is based.

13 (4) A responding tribunal of this state may not condition the payment of a support order issued
14 under this part upon a party's compliance with visitation provisions.

15 (5) If a responding tribunal of this state issues an order under this part, the tribunal shall send a
16 copy of the order ~~by first-class mail~~ to the petitioner and the respondent and to the initiating tribunal, if any.

17 (6) The department of public health and human services is the responding tribunal for receipt of
18 a petition or comparable proceedings from an initiating state as provided in 40-5-263. In all other cases,
19 the district court is the responding tribunal."
20

21 **Section 27.** Section 40-5-163, MCA, is amended to read:

22 **"40-5-163. Inappropriate tribunal.** If a petition or comparable pleading is received by an
23 inappropriate tribunal of this state, it shall forward the pleading and accompanying documents to an
24 appropriate tribunal in this state or another state and notify the petitioner ~~by first-class mail~~ where and
25 when the pleading was sent."
26

27 **Section 28.** Section 40-5-164, MCA, is amended to read:

28 **"40-5-164. Duties of support enforcement agency.** (1) A support enforcement agency of this
29 state, upon application, shall provide services to a petitioner in a proceeding under this part.

30 (2) A support enforcement agency that is providing services to the petitioner shall, as appropriate:

1 (a) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain
2 jurisdiction over the respondent;

3 (b) request an appropriate tribunal to set a date, time, and place for a hearing;

4 (c) make a reasonable effort to obtain all relevant information, including information as to income
5 and property of the parties;

6 (d) after receipt of a written notice from an initiating, responding, or registering tribunal, promptly
7 send a copy of the notice ~~by first-class mail~~ to the petitioner;

8 (e) after receipt of a written communication from the respondent or the respondent's attorney,
9 promptly send a copy of the communication ~~by first-class mail~~ to the petitioner; and

10 (f) notify the petitioner if jurisdiction over the respondent cannot be obtained.

11 (3) This part does not create or negate a relationship of attorney and client or other fiduciary
12 relationship between a support enforcement agency or the attorney for the agency and the individual being
13 assisted by the agency.

14 (4) For purposes of this part, the department of public health and human services is the support
15 enforcement agency for this state as provided in Title 40, chapter 5, parts 2, 4, and 5. All the provisions
16 of this part must be interpreted as supplemental to and cumulative with the department's powers and duties
17 under those provisions. In all other cases, the county attorney in the county in which an action must be
18 filed is the support enforcement agency."

19
20 **Section 29.** Section 40-5-173, MCA, is amended to read:

21 **"40-5-173. Costs and fees.** (1) The petitioner may not be required to pay a filing fee or other costs
22 to initiate a proceeding under this part.

23 (2) If an obligee prevails, a responding tribunal may assess against an obligor the filing fees,
24 reasonable attorney fees, other costs, and necessary travel and other reasonable expenses incurred by the
25 obligee and the obligee's witnesses. Except as provided by other law, the tribunal may not assess fees,
26 costs, or expenses against the obligee or the support enforcement agency of either the initiating or the
27 responding state. Attorney fees may be taxed as costs and may be ordered paid directly to the attorney,
28 who may enforce the order in the attorney's own name. Payment of current support owed to the obligee
29 has priority over fees, costs, and expenses.

30 (3) The tribunal shall order the payment of costs and reasonable attorney fees if it determines that

1 a hearing was requested primarily for delay. In a proceeding under ~~40-5-184 through 40-5-195 or 40-5-271~~
2 ~~this part for enforcement or modification of a support order after registration~~ 40-5-184 THROUGH
3 40-5-195, a hearing is presumed to have been requested primarily for delay if a registered support order
4 is confirmed or enforced without change.

5 (4) The standardized schedule of fees established by the department of public health and human
6 services under 40-5-210 is conclusive in any action under this section. Any fees or costs recoverable under
7 subsection (2) that are not included in the standardized schedules are recoverable under subsection (2)."

8
9 **Section 36.** ~~Section 40-5-186, MCA, is amended to read:~~

10 **"40-5-186. Effect of registration enforcement.** (1) ~~A support order or income-withholding order~~
11 ~~issued in another state is registered when the order is filed in a registering tribunal of this state.~~

12 ~~(2) A registered order issued in another state is enforceable in the same manner and is subject to~~
13 ~~the same procedures as an order issued by a tribunal of this state.~~

14 ~~(3) Except as otherwise provided in 40-5-184 through 40-5-195 this part, a tribunal of this state~~
15 ~~shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction."~~

16
17 **Section 30.** Section 40-5-188, MCA, is amended to read:

18 **"40-5-188. Notice of registration of order.** (1) When a support order or income-withholding order
19 issued in another state is registered, the registering tribunal shall notify the nonregistering party. ~~Notice~~
20 ~~must be given by first class or certified mail or by any means of personal service authorized by the law of~~
21 ~~this state.~~ The notice must be accompanied by a copy of the registered order and the documents and
22 relevant information accompanying the order.

23 (2) The notice must inform the nonregistering party:

24 (a) that a registered order is enforceable as of the date of registration in the same manner as an
25 order issued by a tribunal of this state;

26 (b) that a hearing to contest the validity or enforcement of the registered order must be requested
27 within 20 days after ~~the date of mailing or personal service of the~~ THE DATE OF MAILING OR PERSONAL
28 SERVICE OF THE notice;

29 (c) that failure to contest the validity or enforcement of the registered order in a timely manner:

30 (i) will result in confirmation of the order and enforcement of the order and the alleged arrearages;

1 and

2 (ii) precludes further contest of that order with respect to any matter that could have been asserted;

3 and

4 (d) of the amount of any alleged arrearages.

5 (3) Upon registration of an income-withholding order for enforcement, the registering tribunal shall

6 notify the obligor's employer pursuant to ~~Title 40, chapter 5, part 4~~ the income-withholding laws of this

7 state."

8

9 **Section 31.** Section 40-5-189, MCA, is amended to read:

10 **"40-5-189. Procedure to contest validity or enforcement of registered order.** (1) A nonregistering

11 party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing

12 within 20 days after the date of mailing or personal service of notice of the registration. The nonregistering

13 party may, pursuant to 40-5-190, seek to vacate the registration, to assert any defense to an allegation

14 of noncompliance with the registered order, or to contest the remedies being sought or the amount of any

15 alleged arrearages.

16 (2) If the nonregistering party fails to contest the validity or enforcement of the registered order

17 in a timely manner, the order is confirmed by operation of law.

18 (3) If a nonregistering party requests a hearing to contest the validity or enforcement of the

19 registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties

20 ~~by first-class mail~~ of the date, time, and place of the hearing."

21

22 **Section 32.** Section 40-5-194, MCA, is amended to read:

23 **"40-5-194. Modification of child support order of another state.** (1) After a child support order

24 issued in another state has been registered in this state, the ~~appropriate~~ responding tribunal of this state

25 may modify that order only if ~~section 10~~ SUBSECTION (5) does not apply, and, after notice and hearing,

26 it finds that:

27 (a) the following requirements are met:

28 (i) the child, the individual obligee, and the obligor do not reside in the issuing state;

29 (ii) a petitioner who is a nonresident of this state seeks modification; and

30 (iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

1 (b) ~~an individual party or the child or a party who is an individual~~ is subject to the personal
2 jurisdiction of the tribunal of this state and all of the ~~individual parties who are individuals~~ have filed in the
3 ~~issuing tribunal a written consent providing that the appropriate consents in the issuing tribunal for a~~
4 tribunal of this state may to modify the support order and ~~that this state may~~ assume continuing, exclusive
5 jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law
6 or established procedures substantially similar to the procedures under this part, the consent otherwise
7 required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify
8 the child support order.

9 (2) Modification of a registered child support order is subject to the same requirements, procedures,
10 and defenses that apply to the modification of an order issued by a tribunal of this state, and the order may
11 be enforced and satisfied in the same manner.

12 (3) A tribunal of this state may not modify ~~only any aspect of~~ a child support order that may not
13 be modified under the laws of the issuing state. ~~A tribunal may not modify provisions, such as custody,~~
14 ~~visitation, or other provisions not related to support~~ If two or more tribunals have issued child support
15 orders for the same obligor and child, the order that controls and must be recognized under 40-5-151
16 establishes the aspects of the support order that are nonmodifiable.

17 (4) On issuance of an order modifying a child support order issued in another state, a tribunal of
18 this state has continuing, exclusive jurisdiction.

19 (5) (A) IF ALL OF THE PARTIES WHO ARE INDIVIDUALS RESIDE IN THIS STATE AND THE CHILD
20 DOES NOT RESIDE IN THE ISSUING STATE, A TRIBUNAL OF THIS STATE HAS JURISDICTION TO
21 ENFORCE AND MODIFY THE ISSUING STATE'S CHILD SUPPORT ORDER IN A PROCEEDING TO REGISTER
22 THAT ORDER.

23 (B) A TRIBUNAL OF THIS STATE EXERCISING JURISDICTION UNDER SUBSECTION (5)(A) SHALL
24 APPLY THE PROVISIONS OF 40-5-103, 40-5-143 THROUGH 40-5-152, 40-5-181, AND 40-5-184
25 THROUGH 40-5-195 TO THE ENFORCEMENT OR MODIFICATION PROCEEDING. THE REMAINING
26 SECTIONS OF THIS PART DO NOT APPLY.

27 ~~(5)(6)~~ Within 30 days after issuance of a modified child support order, the ~~tribunal issuing party~~
28 obtaining the modification shall file a certified copy of the order:

29 (a) with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order; and

30 (b) in each tribunal in which the ~~modifying tribunal party~~ knows that the earlier order has been

1 registered.

2 ~~(6)(7)~~ A party who obtains the order and fails to file a certified copy is subject to appropriate
3 sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the
4 validity or enforceability of the modified order of the new tribunal of continuing, exclusive jurisdiction."
5

6 **Section 33.** Section 40-5-195, MCA, is amended to read:

7 **"40-5-195. Recognition of order modified in another state.** A tribunal of this state shall recognize
8 a modification of its earlier child support order by a tribunal of another state that assumed jurisdiction
9 pursuant to this part or a law substantially similar to this part. Except as otherwise provided in this part,
10 the tribunal of this state shall, upon request:

- 11 (1) enforce the order that was modified only as to amounts accruing before the modification;
12 (2) enforce only nonmodifiable aspects of that order;
13 (3) provide other appropriate relief only for violations of the order that occurred before the effective
14 date of the modification; and
15 (4) recognize the modifying order of the other state, upon registration, for the purpose of
16 enforcement."
17

18 **Section 34.** Section 40-5-196, MCA, is amended to read:

19 **"40-5-196. Proceeding to determine parentage.** (1) A tribunal of this state may serve as an
20 initiating or responding tribunal in a proceeding brought under this part or a law or procedure substantially
21 similar to this part, the Uniform Reciprocal Enforcement of Support Act, ~~or~~ the Revised Uniform Reciprocal
22 Enforcement of Support Act, or a law or procedure substantially similar to either of those acts to determine
23 whether the petitioner is a parent of a particular child or to determine whether a respondent is a parent of
24 that child.

25 (2) In a proceeding to determine parentage, a responding tribunal of this state shall apply the rules
26 of this state on choice of law.

27 (3) A proceeding to determine parentage directed to:

28 (a) the department of public health and human services from an initiating state pursuant to
29 40-5-263 and this part is subject to the provisions of 40-5-231 through 40-5-237 or Title 40, chapter 6,
30 part 1, as applicable; and

(b) a district court from an initiating state is subject to the provisions of Title 40, chapter 6, part 1."

Section 35. Section 40-5-201, MCA, is amended to read:

"40-5-201. Definitions. As used in this part, the following definitions apply:

(1) "Alleged father" means a person who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a person who is presumed to be a child's father under the provisions of 40-6-105.

(2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; any person under 19 years of age and still in high school; or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday and for whom:

(i) support rights are assigned under 53-2-613;

(ii) a public assistance payment has been made;

(iii) the department is providing support enforcement services under 40-5-203; or

(iv) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or ~~under~~ Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of public health and human services.

(4) "Director" means the director of the department of public health and human services or the director's authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

(6) "Hearings officer" or "hearing examiner" means the hearings officer appointed by the department for the purposes of this chapter.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

(8) "Obligee" means:

1 (a) a person to whom a duty of support is owed and who is receiving support enforcement services
2 under this part; or

3 (b) a public agency of this or another state having the right to receive current or accrued support
4 payments.

5 (9) "Obligor" means a person, including an alleged father, who owes a duty of support.

6 (10) "Parent" means the natural or adoptive parent of a child.

7 (11) "Paternity blood test" means a test that demonstrates through examination of genetic markers
8 either that an alleged father is not the natural father of a child or that there is a probability that an alleged
9 father is the natural father of a child. The genetic markers may be identified from a person's blood or tissue
10 sample. The blood or tissue sample may be taken by blood drawing, buccal swab, or any other method
11 approved by the American association of blood banks. Paternity blood tests may include but are not limited
12 to the human leukocyte antigen test and DNA probe technology.

13 (12) "Public assistance" means any type of monetary or other assistance for a child, including
14 medical and foster care benefits. The term includes payments to meet the needs of a relative with whom
15 the child is living, if assistance has been furnished with respect to the child by a state or county agency
16 of this state or any other state.

17 (13) "Support debt" or "support obligation" means the amount created by:

18 (a) the failure to provide for the medical, health, and support needs of a child under the laws of
19 this or any other state or under a support order; or

20 (b) a support order for spousal maintenance ~~if the judgment or order requiring payment of~~
21 ~~maintenance also contains a judgment or order requiring payment of child support for a child of whom the~~
22 ~~person awarded maintenance is~~ of the custodial parent.

23 (14) "Support order" means an order, whether temporary or final, that:

24 (a) provides for the payment of a specific amount of money, expressed in periodic increments or
25 as a lump-sum amount, for the support of the child, including an amount expressed in dollars for medical
26 and health needs, child care, education, recreation, clothing, transportation, and other related expenses and
27 costs specific to the needs of the child; and

28 (b) is issued by:

29 (i) a district court of this state;

30 (ii) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

1 (iii) an administrative agency pursuant to proceedings under this part; or

2 (iv) an administrative agency of another state, Indian tribe, or foreign country with a hearing
3 function and process similar to those of the department under this part.

4 (15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations
5 promulgated under the act."
6

7 **Section 36.** Section 40-5-203, MCA, is amended to read:

8 **"40-5-203. Child support enforcement services.** (1) The department may accept applications for
9 child support enforcement services on behalf of persons who are not recipients of public assistance and
10 may take appropriate action to establish or enforce support obligations against persons owing a duty to pay
11 support.

12 (2) The department may establish by rule the terms and conditions by which services are provided
13 under this section.

14 (3) If child support enforcement services are provided under this part to or for a child as a result
15 of the payment of public assistance, the department ~~may~~ shall continue to provide services after public
16 assistance is no longer being paid, subject to the same conditions and on the same basis as in the case of
17 other individuals to whom services are furnished under this section, without requiring an application,
18 application fee, or other request for services. ~~An obligee's acceptance~~ Acceptance of continued services
19 constitutes ~~the obligee's~~ agreement to the terms and conditions set for applicants by the department under
20 this section.

21 (4) Services under this section, including information requests, are available to obligors, obligees,
22 and residents of other states on the same terms as residents of this state.

23 ~~(4)(5)~~ (5) The department may terminate services under this section if it:

24 (a) receives a written request ~~from the obligee~~ for termination of services from the person to whom
25 services are being provided;

26 (b) receives notice that the child is receiving public assistance; or

27 (c) determines that ~~an obligee~~ the person receiving services has violated any term or condition set
28 by the department for an applicant under this section.

29 (6) FOR PURPOSES OF CREDIT RATING REPORTS BY THE DEPARTMENT, THE DEPARTMENT
30 SHALL INDICATE IF THE WITHHOLDING IS FOR DELINQUENT SUPPORT OR FOR REGULAR MONTHLY

SUPPORT OBLIGATIONS."

Section 37. Section 40-5-206, MCA, is amended to read:

"40-5-206. Central unit for information and administration -- cooperation enjoined -- availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, for receiving and answering requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise departmental activities in relation to deserting parents, and to ensure effective cooperation with law enforcement agencies.

(2) ~~If services are provided to a child under this part, the~~ DURING OR IN ANTICIPATION OF A DELINQUENCY, ENFORCEMENT, OR MODIFICATION PROCEEDING, A PROCEEDING TO ESTABLISH CHILD OR MEDICAL SUPPORT OR PATERNITY, AN ATTEMPT TO LOCATE AN OBLIGOR, OR A CONTESTED CASE, THE department ~~or other IV-D agency~~ may request and, notwithstanding any statute making the information confidential, all state, county, and city agencies, officers, and employees shall provide on request information, if known, concerning an obligor or obligee, including:

- (a) name;
- (b) residential and mailing addresses;
- (c) date of birth;
- ~~(d) social security number;~~
- ~~(e)(D)~~ wages or other income;
- ~~(f)(E)~~ number of dependents claimed for state and federal income tax withholding purposes;
- ~~(g)(F)~~ name and address of employer;
- ~~(h)(G)~~ state and local tax and revenue records;
- ~~(i)(H)~~ penal corrections records;
- ~~(h)(i)(I)~~ address, location, and description of any real property or titled personal property; and
- ~~(i)(k)(J)~~ any other asset in which the obligor or obligee may have an interest, including its location and the extent, nature, and value of the interest.

(3) Upon service of an administrative subpoena from the department or another IV-D agency DURING OR IN ANTICIPATION OF A DELINQUENCY, ENFORCEMENT, OR MODIFICATION PROCEEDING, A PROCEEDING TO ESTABLISH CHILD OR MEDICAL SUPPORT OR PATERNITY, AN ATTEMPT TO LOCATE

1 AN OBLIGOR, OR A CONTESTED CASE, public utilities, cable television companies, AND financial
2 institutions, and all other entities maintaining customer data bases shall, with regard to an obligor or
3 obligee, provide the department or the requesting IV-D agency with the name and address of the obligor
4 or obligee, the name and address of the obligor's or obligee's employer, and any information on the
5 obligor's or obligee's assets and liabilities contained in customer records.

6 ~~(3)(4)~~ Any information obtained by the department during the course of a child support
7 investigation that is confidential at the source must be treated by the department as confidential and must
8 be safeguarded accordingly. The Absent a specific statutory prohibition to the contrary and subject to
9 subsection (6), the department may release information obtained from nonconfidential public and private
10 sources, including information regarding support orders, judgments, and payment records.

11 ~~(4)(5)~~ Use Absent a specific statutory prohibition or rule to the contrary and subject to subsection
12 (6), use or disclosure of information obtained by the department from confidential sources ~~of and or any~~
13 information maintained by the department in its records, including the names, addresses, and social security
14 numbers of obligors and obligees, is limited to:

15 (a) purposes directly related to the provision of services under this chapter;

16 (b) county attorneys and courts having jurisdiction in support and abandonment proceedings and
17 agencies in other states engaged in the enforcement of support of minor children under the federal Social
18 Security Act; and

19 (c) any other use permitted or required by the federal Social Security Act.

20 (6) The department may not disclose information regarding the whereabouts of a party to another
21 party if:

22 (a) the department received notice that a protective order with respect to the party has been entered
23 against the other party; or

24 (b) the department has reason to believe that the release of information may result in physical or
25 emotional harm to the party.

26 (7) A person[, public entity,] or private entity that discloses information to the department in
27 compliance with this section is not liable to the obligor or obligee for negligent disclosure.

28 (8) An entity failing to comply with this section is subject to the contempt authority of the
29 department under 40-5-226."

1 **Section 38.** Section 40-5-210, MCA, is amended to read:

2 **"40-5-210. Standardized fee schedule -- rules.** (1) The department may charge an application fee
3 to each person applying for services under 40-5-203, except that the fee may not be charged to persons
4 who receive continuing services under 40-5-203(3). The application fee may be:

5 (a) a flat dollar amount; or

6 (b) an amount based on a sliding fee schedule that is based on the applicant's income level.

7 (2) If paternity is established or presumed under 40-5-234 for the alleged father, the fees for
8 paternity blood testing may be recovered from the parent, whether the alleged father or the mother,
9 denying paternity of the alleged father. The total amount of the paternity blood testing fee may not exceed
10 the actual costs of the paternity blood tests. A bill for a paternity blood test is admissible in evidence
11 without third-party foundation testimony.

12 (3) The department may charge a handling fee for each payment of support collected on behalf of
13 any obligee who is not a recipient of public assistance. The department may withhold the fee from the
14 support payment before distribution to the obligee.

15 (4) The department may charge an obligor a late payment fee for each late payment of support
16 collected on behalf of any obligee.

17 (5) The department may establish a fee schedule in order to recover costs and expenses in excess
18 of the application, handling, and late fees. The fees must be commensurate with costs or an average of the
19 expenditures related to specific or routine activities.

20 (a) The department shall develop procedures for determining whether it is appropriate for either the
21 obligor or the obligee to be responsible for payment of the fee. In developing the procedures, the
22 department shall consider federal regulations promulgated under Title IV-D of the Social Security Act.

23 (b) In an action to establish paternity or to establish or enforce a child support obligation, whether
24 in district court or by administrative process, the department must be awarded costs in the amount
25 established in the fee schedule as part of any judgment, decree, or order whenever the department:

26 (i) is a prevailing party in the action; or

27 (ii) is not a party but incurs expenses and costs related to the action.

28 (6) The department may collect the fees awarded under this section by one of the following means:

29 (a) if the fee is owed by an obligor, the fee may be:

30 (i) collected through any remedy available to the department for the collection of child support

1 arrearages; or

2 (ii) deducted from any payments made by the obligor before the payment is distributed to the
3 obligee. Credit for the payment must be reduced by the amount of the deduction for the fee. The deduction
4 for fees may not reduce any current support due to the obligee. The deduction for a late payment fee may
5 not reduce any current or past-due support due to the obligee.

6 (b) if the fee is owed by the obligee, the fee may be collected separately through any remedy
7 available to the department for the collection of child support or the department may withhold the fee
8 amount out of any payment collected on behalf of the obligee. The obligor must receive full credit for the
9 payment as if the withholding of fees did not occur.

10 (7) The department, upon a showing of necessity, may waive or defer any fee assessed under this
11 section.

12 (8) The department may adopt rules necessary to implement fee schedules under this section.

13 (9) The fees and costs charged and collected under this section must be paid monthly into the state
14 treasury to the credit of the child support enforcement division special revenue fund and must be
15 accompanied by a detailed statement of the amounts collected."

16
17 **Section 39.** Section 40-5-225, MCA, is amended to read:

18 **"40-5-225. Notice of financial responsibility -- temporary and final support obligations --**
19 **administrative procedure.** ~~(1) (a) In the absence of a support order, the department may serve an obligor~~
20 ~~with a notice of financial responsibility alleging a child's need for support and the amount of the need and~~
21 ~~requiring the obligor to appear and show cause at a hearing held by the department why the obligor should~~
22 ~~not be finally ordered to pay the amount alleged in the notice.~~

23 ~~(b) The notice must state:~~

24 ~~(i) the names of the obligee and child;~~

25 ~~(ii) the amount of current and future support to be paid each month for the child;~~

26 ~~(iii) that if the obligor does not file a written answer within 20 days from the date of service or~~
27 ~~refusal of service, the amount in the notice must be finally ordered;~~

28 ~~(iv) that the obligor is entitled to a fair hearing under 40-5-226.~~

29 ~~(2) If, prior to the service of the notice under this section, the department has information~~
30 ~~concerning the obligor's financial condition, the department's allegation of the obligor's monthly support~~

responsibility must be based on the scale of suggested minimum contributions under 40-5-214. If such information is unknown to the department, the allegations of the obligor's monthly support responsibility must be based on the greater of:

(a) the amount of public assistance payable under Title 53, chapter 4; or

(b) the alleged need.

(3) If the obligor objects to the notice, the obligor shall file a written answer with the department within 20 days from the date of service or refusal of service. If the department receives a timely answer, it shall conduct a fair hearing under 40-5-226. If the department does not receive a timely answer, it shall order the obligor to pay the amount stated in the notice.

(1) In the absence of an existing support order, when the requirements of this section are met, the department may enter an order requiring a child's parent or parents to pay an amount each month for the support of the child. The support order must include a medical support order as required by 40-5-208.

(2) An action to establish a support order must be commenced by serving a notice of financial responsibility on the parent or parents. The notice must include a statement:

(a) of the names of the child, the obligee, and if different than the obligee, the child's guardian or caretaker relative;

(b) of the dollar amount of the support obligation to be paid each month for the child;

(c) that in addition to child support, the parent or parents may be ordered to provide for the child's medical support needs;

(d) that any party may request a hearing to contest the amount of child support shown in the notice or to contest the establishment of a medical support order;

(e) that if a party does not timely file a request for hearing, support, including medical support, will be ordered as declared in the notice or in accordance with the child support guidelines adopted under 40-5-209;

(f) that if a party does request a hearing, the other parties may refuse to participate in the proceedings, however, the child support and medical support order will be determined using the information available to the department or provided at the hearing;

(g) that a party's refusal to participate is a consent to entry of a child support and medical support order consistent with the department's determination; and

(h) that the parties are entitled to a fair hearing under 40-5-226.

1 ~~(4)-(a)(3)~~ If a support action is pending in district court and a temporary or permanent support
2 obligation has not been ordered or if a paternity action is pending and there is clear and convincing evidence
3 of paternity based on paternity blood tests or other evidence, the department may ~~issue to the obligor a~~
4 ~~notice of temporary support obligation~~ enter an order requiring a child's parent or parents to pay an amount
5 each month for the temporary support of the child pending entry of a support order by the district court.
6 The temporary support order must include a medical support order as required by 40-5-208.

7 ~~(b) The notice must contain:~~

8 ~~(i) the names of the child and the person or agency having the custodial care of the child;~~

9 ~~(ii) an amount for temporary monthly support determined as provided in subsection (2);~~

10 ~~(iii) a statement that the obligor may request a hearing at which the obligor may show that a~~
11 ~~different support amount is appropriate or that establishment of a support obligation is inappropriate under~~
12 ~~the circumstances. The hearing must be conducted in accordance with the procedures of 40-5-226.~~

13 ~~(iv) a statement that a hearing must be requested in writing within 10 days of receipt of the notice~~
14 ~~or the order for a temporary support order will be entered in the amount stated in the notice; and~~

15 ~~(v) a statement that the temporary support order will terminate upon the entry of a district court~~
16 ~~support order. If the district court order is retroactive, any amount paid for a particular period under the~~
17 ~~temporary support order must be credited against the amounts due under the district court order for the~~
18 ~~same period, but excess amounts may not be refunded. If the district court determines that a periodic~~
19 ~~support obligation is not proper, any amount paid under the temporary support order must be refunded to~~
20 ~~the obligor.~~

21 (4) An action to establish a temporary support order must be commenced by serving a notice of
22 temporary support obligation on the parent or parents. In addition to the statements required in subsection
23 (2), the notice must include a statement that:

24 (a) a party may request a hearing to show that a temporary support obligation is inappropriate under
25 the circumstances; and

26 (b) the temporary support order will terminate upon the entry of a final support order or an order
27 of nonpaternity. If the final order is retroactive, any amount paid for a particular period under the temporary
28 support order must be credited against the amounts due under the final order for the same period, but
29 excess amounts may not be refunded. If an order of nonpaternity is issued or if the final support order
30 states that periodic support obligation is not proper, the obligor may seek a OBLIGEE SHALL refund from

1 TO the obligee for OBLIGOR any IMPROPER amounts paid under the temporary support order, PLUS ANY
2 COSTS THE OBLIGEE INCURS IN RECOVERING THE AMOUNT TO BE REFUNDED.

3 (5) (a) If a temporary support order is entered or if proceedings are commenced under this section
4 for a married obligor, the department shall vacate any support order or dismiss any proceeding under this
5 part if it finds that the parties to the marriage have:

- 6 (i) reconciled without the marriage having been dissolved;
7 (ii) made joint application to the department to vacate the order or dismiss the proceeding; and
8 (iii) provided proof that the marriage has been resumed.

9 (b) The department may not vacate a support order or dismiss a proceeding under this subsection
10 (5) if it determines that the rights of a third person or the child are affected. The department may issue a
11 new notice of temporary support obligation under this section if the parties subsequently separate.

12 (6) ~~Any~~ A notice of financial responsibility and the notice of temporary support obligation ~~must~~ may
13 be served by certified mail or in the same manner prescribed for the service of a summons in civil action
14 in accordance with the Montana Rules of Civil Procedure.

15 (7) If prior to service of a notice under this section, the department has sufficient financial
16 information, the department's allegation of the obligor's monthly support responsibility, whether temporary
17 or final, must be based on the child support guidelines established under 40-5-214. If the information is
18 unknown to the department, the allegations of the parent's or parents' monthly support responsibility must
19 be based on the greater of:

20 (a) the maximum amount of public assistance that could be payable to the child under Title 53 if
21 the child were otherwise eligible for assistance; or

22 (b) the child's actual need as alleged by the custodial parent, guardian, or caretaker of the child.

23 (8) (a) A party who objects to a notice of financial responsibility or notice of temporary support
24 obligation may file a written request for hearing with the department:

25 (i) within 20 days from the date of service of a notice of financial responsibility; and

26 (ii) within 10 days from the date of service of a notice of temporary support obligation.

27 (b) If the department receives a timely request for a hearing, it shall conduct one under 40-5-226.

28 (c) If the department does not receive a timely request for a hearing, it shall order the parent or
29 parents to pay child support and to provide for the child's medical needs as stated in the notice. The child
30 support obligation must be the amount stated in the notice or determined in accordance with the child

1 support guidelines adopted under 40-5-209.

2 (9) A child support and medical support order under subsection (1) continues until the child attains
3 18 years of age or the child's graduation from high school, whichever occurs later, but not later than the
4 child's 19th birthday, unless the child is sooner emancipated by court order. A temporary support obligation
5 established under subsection (3) continues until terminated as provided in subsection (5) or until the
6 temporary order is superseded by a final order, judgment, or decree."

7
8 **Section 40.** Section 40-5-226, MCA, is amended to read:

9 **"40-5-226. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear**
10 **-- entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

11 (2) If a hearing is requested, it must ~~be scheduled within 20 days~~ initially be by teleconference
12 methods and is subject to the Montana Administrative Procedure Act. At the request of a party and OR
13 upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the
14 hearings officer shall grant a de novo in-person hearing.

15 (3) The hearings officer shall determine the liability and responsibility, if any, of the ~~obligor parent~~
16 or parents under the notice and shall enter a final decision and order in accordance with the determination.
17 The order may award support from the date of:

18 (a) the child's birth if paternity was established under 40-5-231 through 40-5-238 or under Title
19 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

20 (b) the parties' separation if support is initially established under 40-5-225; or

21 (c) notice to the parties of a support modification request under 40-5-273.

22 (4) ~~(a) If Except as provided in subsection (4)(b), if the obligor fails~~ (a) Except as provided in subsection (4)(b), if the obligor fails
23 parent or parents fail to appear
24 at the hearing or fails to timely file a request for a hearing, the hearings officer, upon a showing of valid
25 service, shall enter a default decision and order declaring the amount stated in the notice to be final.

26 (b) In a multiple party proceeding under 40-5-225, if one party files a timely request for hearing,
27 the matter must be set for hearing. Notice of the hearing must be served on the parties. If a party refuses
28 to appear for the hearing or participate in the proceedings, the hearing officer shall determine child support
29 and medical support orders based on the notice, information available to the department, and evidence
30 provided at the hearing by the appearing parties. A party's refusal to appear is a consent to entry of child
and medical support orders consistent with the hearing officer's determination. HOWEVER, THE DEFAULT

ORDER MAY NOT BE FOR MORE THAN THE SUPPORT REQUESTED IN THE NOTICE UNLESS THE HEARINGS OFFICER FINDS THAT THE EVIDENCE REQUIRES A LARGER AMOUNT.

(5) In a hearing to determine financial responsibility, whether temporary or final, and in any proceeding to modify support under 40-5-273, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the uniform child support guidelines adopted by the department under 40-5-209. The hearings officer is not limited to the amounts stated in the notice. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the order is entered upon the parties' consent. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the hearings officer finds by clear and convincing evidence that the application of the guidelines is unjust to the child or to any of the parties or is inappropriate in a particular case. If the hearings officer finds that the guideline amount is unjust or inappropriate in a particular case, the hearings officer shall state the reasons for finding that the application of the guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar findings must also be made in a case in which the parties have agreed to a support amount that varies from the guideline amount. The hearings officer may vary the application of the guidelines to limit the obligor's liability for past support to the proportion of expenses already incurred that the hearings officer considers just. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(6) In a hearing to enforce a support order or to establish paternity under this chapter, the department shall send a copy of the notice of hearing to the obligee by regular mail addressed to the obligee's last-known address. The obligee may attend and observe the hearing as a nonparty. This subsection does not limit participation of an obligee who is a party to the proceedings or who is called as a witness to testify.

~~(6)(7) (a) Within 20 days of the hearing, the~~ THE WITHIN 60 DAYS AFTER THE HEARING HAS BEEN CONCLUDED, ANY POST-HEARING BRIEFS ARE RECEIVED, AND ALL THE EVIDENCE SUBMITTED, EXCEPT FOR GOOD CAUSE, THE hearings officer shall enter a final decision and order. The determination of the hearings officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act. A copy of the final decision must be delivered

1 or mailed to each party, each party's attorney, and the obligee if the obligee is not a party.

2 (b) A child support obligation established under this section is subject to the registration and
3 processing provisions of [sections 1 through 44] 9].

4 ~~(7)(8)~~ A support order entered under this part must contain a statement that the order is subject
5 to review and modification by the department upon the request of the department or a party under
6 40-5-271 through 40-5-273 when the department is providing services under IV-D for the enforcement of
7 the order.

8 ~~(8)(9)~~ A support debt determined pursuant to this section is subject to collection action without
9 further necessity of action by the hearings officer.

10 ~~(9)(10)~~ A child support debt or a support responsibility obligation determined under this part by
11 reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing
12 may be vacated, upon the motion of an obligor, by the hearings officer within the time provided and upon
13 a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure. WHEN ISSUING A
14 SUPPORT ORDER, THE DEPARTMENT SHALL CONSIDER WHETHER ANY OF THE EXCEPTIONS TO
15 IMMEDIATE INCOME WITHHOLDING FOUND AT 40-5-411 APPLY, AND, IF AN EXCEPTION IS
16 APPLICABLE, THE DEPARTMENT SHALL INCLUDE THE EXCEPTION IN THE SUPPORT ORDER.

17 ~~(10)(11)~~ (a) Unless the hearings officer makes a written exception under 40-5-315 or 40-5-411
18 and the exception is included in the support order, each order establishing a child support obligation,
19 whether temporary or final, and each modification of an existing child support order under this part is
20 enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4.
21 A support order that omits that provision or that provides for a payment arrangement inconsistent with this
22 section is nevertheless subject to withholding for the payment of support without need for an amendment
23 of the support order or for any further action by the hearings officer.

24 (b) If an obligor is excepted from paying support through income withholding, the support order
25 must include a requirement that whenever a party to the case is receiving IV-D services, support payments
26 must be paid through the department as provided in [section 5].

27 ~~(11)(12)~~ (a) ~~For the purposes of income withholding provided for in subsection (10), whenever if~~
28 the department establishes paternity or establishes or modifies a child support obligation, the department's
29 order must include a provision requiring the obligor, for as long as the department is providing support
30 enforcement services, to keep the department informed of the name and address of the obligor's current

employer, whether the obligor has access to health insurance through an employer or other group, and, if so, the health insurance policy information. each party other than the department to promptly file with the department and to update, as necessary, information on:

(i) identity of the party;

(ii) social security number;

(iii)(II) residential and mailing addresses;

(iv)(III) telephone number;

(v)(IV) driver's license number;

(vi)(V) name, address, and telephone number of employer; and

(vii)(VI) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the obligor's and obligee's employer.

(b) The order must further direct that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the department's due process requirements for notice and service of process are met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the department.

(C) THE DEPARTMENT SHALL KEEP THE INFORMATION PROVIDED UNDER SUBSECTION (12)(A) CONFIDENTIAL EXCEPT AS NECESSARY FOR PURPOSES OF TITLE IV-D OF THE SOCIAL SECURITY ACT.

(12)(13) The hearings officer may:

(a) compel obedience to the hearings officer's orders, judgments, and process and to any subpoenas and orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

(b) compel the attendance of witnesses at administrative hearings;

(c) compel obedience of subpoenas for paternity blood tests;

(d) compel the production of accounts, books, documents, and other evidence; and

(e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in accordance with the provisions of 2-4-104.

(f) compel the production of information requested by the department or IV-D agency of another

1 state under 40-5-443.

2 ~~(13)~~(14) A contempt occurs whenever:

3 (a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer
4 or of the department;

5 (b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear
6 for genetic paternity tests fails to do so;

7 (c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing
8 fails to do so;

9 (d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply
10 with discovery requests; or

11 (e) a person or entity compelled by administrative subpoena from the department or another IV-D
12 agency to produce financial information or other information needed to establish paternity or to establish,
13 modify, or enforce a support order fails to do so;

14 ~~(e)~~(f) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the
15 provisions of the order. In the case of a payor under an income-withholding order, a separate contempt
16 occurs each time that income is required to be withheld and paid to the department and the payor fails to
17 take the required action.

18 (g) a payor or labor union fails to provide information to the department or another IV-D agency
19 when requested under 40-5-443; or

20 ~~(h) a financial institution uses information provided by the department pursuant to [section 11] for~~
21 ~~any other purpose without the authorization of the department.~~

22 ~~(14)~~(15) BEFORE INITIATING A CONTEMPT PROCEEDING, THE DEPARTMENT SHALL GIVE THE
23 ALLEGED CONTEMNOR NOTICE BY PERSONAL SERVICE OR CERTIFIED MAIL OF THE ALLEGED
24 INFRACTION AND A REASONABLE OPPORTUNITY TO COMPLY WITH THE LAW AND TO CURE THE
25 ALLEGED INFRACTION. IN ORDER TO INITIATE A CONTEMPT PROCEEDING, AN affidavit of the facts
26 constituting a contempt must be submitted to the hearings officer, who shall review it to determine whether
27 there is cause to believe that a contempt has been committed. If cause is found, the hearings officer shall
28 issue a citation requiring the alleged contemnor to appear and show cause why the alleged contemnor
29 should not be determined to be in contempt and required to pay a penalty of not more than \$500 for each
30 count of contempt. The citation, along with a copy of the affidavit, must be served upon the alleged

contemnor either by personal service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

~~(15)~~(16) At the time and date set for hearing, the hearings officer shall proceed to hear witnesses and take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearings officer finds the alleged contemnor in contempt, the hearings officer may impose a penalty of not more than \$500 for each count found. The hearings officer's decision constitutes a final agency decision, subject to judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

~~(16)~~(17) An amount imposed as a penalty may be collected by any remedy available to the department for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs of administrative hearings conducted under this chapter.

~~(17)~~(18) The penalties charged and collected under this section must be paid into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected."

Section 41. Section 40-5-227, MCA, is amended to read:

"40-5-227. Filing and docketing of final orders -- orders effective as district court decrees. (1) An abstract of any final administrative order under this chapter may be filed in the office of the clerk of the district court of any county of Montana. ~~The~~ Upon the request of the department, the order, if approved, must be docketed in the judgment docket of the district court. The properly filed and docketed order has all the force, effect, and attributes of a docketed order or decree of the district court, including but not limited to lien effect and enforceability by supplemental proceedings, writs of execution, and contempt of court proceedings. A final administrative order of the department is effective and enforceable to the same degree as a district court order, without filing and docketing the order in the district court. CONTEMPT OF COURT PROCEEDINGS AND WRITS OF EXECUTION BASED ON THE ADMINISTRATIVE ORDER MAY NOT BE REQUESTED FROM THE DISTRICT COURT UNLESS THE ADMINISTRATIVE ORDER IS FIRST DOCKETED WITH THE DISTRICT COURT. THE ADMINISTRATIVE ORDER MAY NOT OPERATE AS A JUDGMENT LIEN, UNLESS THE ORDER IS FIRST DOCKETED WITH THE DISTRICT COURT OR A LIEN IS OTHERWISE

1 PERFECTED UNDER THE LAWS OF THIS STATE, INCLUDING 40-5-248.

2 (2) A final administrative order that determines and sets periodic support payments in the absence
3 of a district court order, when filed and docketed under this section, may be modified by a district court
4 order only as to installments accruing after actual notice to the parties of any motion for modification. The
5 standard for a modification is that set forth in 40-4-208.

6 (3) The department may issue a warrant for distraint based upon a properly filed and docketed
7 order pursuant to 40-5-247."
8

9 **Section 42.** Section 40-5-232, MCA, is amended to read:

10 **"40-5-232. Establishment of paternity -- notice of ~~paternity determination~~ parental responsibility**
11 **-- contents.** (1) When the paternity of a child has not been legally established under the provisions of Title
12 40, chapter 6, part 1, or otherwise, the department may proceed to establish paternity under the provisions
13 of 40-5-231 through 40-5-237. An administrative hearing held under the provisions of 40-5-231 through
14 40-5-237 is a contested case within the meaning of 2-4-102 and is subject to the provisions of Title 2,
15 chapter 4, except as otherwise provided in 40-5-231 through 40-5-237.

16 (2) It is presumed to be in the best interest of a child to legally determine and establish paternity.
17 A presumption under this subsection may be rebutted by a preponderance of the evidence.

18 (3) In ~~any a~~ proceeding under 40-5-231 through 40-5-237, if ~~a person acknowledges paternity of~~
19 ~~a child in writing and the acknowledgment is filed with the department,~~ an alleged father consents in writing
20 to entry of an order declaring the alleged father to be the legal father of a child, the department may enter
21 an order establishing legal paternity. As a part of ~~a voluntary acknowledgment~~ a consent to entry of an
22 order declaring paternity, the department shall provide information to the ~~parents~~ alleged father **PARENTS**
23 regarding the rights and responsibilities of ~~acknowledging an alleged father consenting to entry of an order~~
24 declaring paternity. ~~An acknowledgment~~ A consent to entry of an order declaring paternity is binding on
25 a parent who executes it, whether or not the parent is a minor.

26 (4) Full faith and credit must be given to a determination of paternity made by any other state,
27 whether presumed by law, established through voluntary acknowledgment, or established by administrative
28 or judicial processes.

29 (5) The department shall commence proceedings to establish paternity by serving on an alleged
30 father a notice of ~~paternity determination~~ parental responsibility. The department may not serve the notice

1 unless it has:

2 (a) a sworn statement ~~from the child's mother~~ claiming that the alleged father is the child's natural
3 father;

4 (b) evidence of the existence of a presumption of paternity under 40-6-105; or

5 (c) any other reasonable cause to believe that the alleged father is the child's natural father.

6 (6) Service on the alleged father of the notice of ~~paternity determination~~ parental responsibility
7 must be made as provided in 40-5-231(2). The notice must include:

8 (a) an allegation that the alleged father is the natural father of the child involved;

9 (b) the child's name and place and date of birth;

10 (c) the name of the child's mother and the name of the person or agency having custody of the
11 child, if other than the mother;

12 (d) the probable time or period of time during which conception took place;

13 (e) a statement that if the alleged father fails to timely deny the allegation of paternity, the question
14 of paternity may be resolved against the alleged father without further notice;

15 (f) a statement that if the alleged father timely denies the allegation of paternity:

16 (i) the alleged father is subject to compulsory paternity blood testing;

17 (ii) a paternity blood test may result in a presumption of paternity; and

18 (iii) upon receipt of the paternity blood test results, if the alleged father continues to deny paternity,
19 the alleged father may request the department to refer the matter to district court for a determination of
20 paternity.

21 (7) The alleged father may file a written denial of paternity with the department within 20 days
22 after service of the notice of ~~paternity determination~~ parental responsibility.

23 (8) When there is more than one alleged father of a child, the department may serve a notice of
24 ~~paternity determination~~ parental responsibility on each alleged father in the same consolidated proceeding
25 or in separate proceedings. Failure to serve notice on an alleged father does not prevent the department
26 from serving notice on any other alleged father of the same child."

27
28 **Section 43.** Section 40-5-233, MCA, is amended to read:

29 **"40-5-233. Establishment of paternity -- administrative hearing -- subpoena -- compulsory blood**
30 **testing. (1) When the department receives a timely written denial of paternity, it may order the alleged**

~~1 father to appear for an administrative hearing. The hearing may be conducted by teleconferencing methods.~~
~~2 If the testimony and other supplementary evidence demonstrate a reasonable probability that the alleged~~
~~3 father had sexual intercourse with the child's mother during the probable time of the child's conception or~~
~~4 if the evidence shows a probable existence of a presumption under 40-6-105, the department may issue~~
~~5 a subpoena ordering the alleged father to submit to paternity blood testing. A reasonable probability of~~
~~6 sexual intercourse during the possible time of conception may be established by affidavit of the child's~~
~~7 mother.~~

8 (1) (a) Paternity blood testing may be requested by the alleged father, the mother, or the child
9 through the child's custodian and may be made in conjunction with or in addition to a notice the department
10 issues under 40-5-232. The request must be in writing and must be supported by a sworn statement of
11 the requester that includes:

12 (i) an allegation of paternity and sufficient facts to establish a reasonable probability that the alleged
13 father engaged in an act with the child's mother during the probable time of the child's conception that
14 could have resulted in the child's conception; or

15 (ii) a denial of paternity and sufficient facts to establish a reasonable probability of the nonexistence
16 of contact between the alleged father and the child's mother that could have resulted in the child's
17 conception.

18 (b) If the department determines after a review of a sworn statement that there are sufficient facts
19 to establish a reasonable probability of paternity or nonpaternity as claimed by the requesting party, the
20 department shall issue a subpoena ordering the alleged father, the mother, or the child through the child's
21 custodian to submit to blood testing.

22 (c) A pending request for blood testing under this section does not prevent the department from
23 issuing a notice of parental responsibility under 40-5-232.

24 (d) Denial of a request for paternity blood testing under this subsection (1) is not a finding of
25 nonpaternity and does not prevent the issuance of a notice under 40-5-232. A denial does not affect the
26 completion of any pending action initiated under 40-5-232.

27 (2) (a) The department may order an alleged father to appear for an administrative hearing when:

28 (i) the department determines that the sworn statement provided in subsection (1) does not contain
29 sufficient facts to issue a blood test subpoena and that additional examination of witnesses or evidence is
30 necessary; or

1 (ii) the department receives a timely filed written denial of paternity in response to a notice under
2 40-5-232.

3 (b) The hearing must initially be conducted by teleconferencing methods and is subject to the
4 provisions of the Montana Administrative Procedure Act. At the request of a party and upon a showing
5 that the party's case was substantially prejudiced by the lack of an in-person hearing, the hearings officer
6 shall, at the close of a teleconference hearing, grant a de novo in-person hearing.

7 (c) The department may issue a subpoena ordering the alleged father to submit to paternity blood
8 testing if the testimony and other supplementary evidence demonstrate a reasonable probability:

9 (i) that the alleged father engaged in an act with the child's mother during the probable time of the
10 child's conception that could have resulted in the child's conception; or

11 (ii) when the alleged father's paternity is presumed under 40-6-105, of the nonexistence of contact
12 between the alleged father and the child's mother that could have resulted in the child's conception.

13 (d) For the purposes of this subsection (2), a reasonable probability of an act during the possible
14 time of conception may be established by affidavit of the child's mother without need for the mother to
15 appear at the hearing.

16 (3) Previous paternity actions under this part that did not result in a subpoena for paternity blood
17 testing do not prevent the department from recommencing a paternity action if the department believes it
18 can establish any of the factors listed in subsection (2)(c) or (2)(d).

19 ~~(2)(4)~~ When there is reasonable cause to suggest that a blood test sample of a person submitting
20 to a blood test was not the sample of the alleged father, mother, or child, an additional hearing may be
21 held. The scope of the hearing is limited to questions involving the blood drawing or the chain of custody
22 at the blood drawing site. The ~~hearing~~ hearings officer may order retesting of any party.

23 ~~(3)(5)~~ If the department does not receive a timely filed written denial of paternity or if an alleged
24 father fails to appear at a scheduled hearing or for a scheduled paternity blood test, the department may
25 enter an order declaring the alleged father the legal father of the child. The order will take effect within 10
26 days after entry of the default unless the alleged father before the 10th day presents good cause for failure
27 to make a timely denial or for failure to appear at the hearing or to undergo paternity blood testing. The
28 department may not enter an order under this section if there is more than one alleged father unless the
29 default applies to only one of them and all others have been excluded by the results of paternity blood
30 testing. An order issued under the provisions of this section may be set aside as provided in 40-5-235(3).

1 ~~(4)(6)~~ If the rights of others and the interests of justice so require, the department may apply to
2 any district court under the provisions of 2-4-104 for an order compelling an alleged father to submit to
3 paternity blood testing. The court shall hear the matter as expeditiously as possible. If the court finds
4 reasonable cause to believe that the alleged father is the natural or presumed father of the child, the court
5 shall enter an order compelling the alleged father to submit to a paternity blood test. ~~As provided in~~
6 ~~subsection (1), reasonable~~ Reasonable cause may be established by affidavit of the child's mother."

7
8 **Section 44.** Section 40-5-235, MCA, is amended to read:

9 **"40-5-235. Effect of order establishing paternity -- birth records -- relief from order.** (1) An
10 administrative order of the department declaring the paternity of a child, ~~docketed as provided in 40-5-227,~~
11 establishes the legal existence of the parent and child relationship for all purposes and confers or imposes
12 all parental rights, privileges, duties, and obligations.

13 (2) Upon the request of the mother or father of ~~the~~ a child born in this state, the department shall
14 prepare a substitute certificate of birth, if necessary, consistent with the administrative order. The
15 substitute certificate of birth is subject to the provisions of 40-6-123, with references to "court" taken to
16 mean "department".

17 (3) Except for an order based on a ~~voluntary acknowledgment of~~ consent to entry of an order
18 declaring paternity, the department may set aside an administrative order establishing the paternity of a
19 child upon the application of any affected party and upon a showing of any of the grounds and within the
20 timeframes provided in Rule 60(b) of the Montana Rules of Civil Procedure.

21 (4) An order of the department under 40-5-232 through 40-5-235 may be reviewed under the
22 provisions of Title 2, chapter 4, part 7."

23
24 **Section 45.** Section 40-5-236, MCA, is amended to read:

25 **"40-5-236. Referral of paternity issue to district court -- record -- parties -- exclusion of other**
26 **matters -- fees.** (1) If the scientific evidence resulting from a paternity blood test does not exclude the
27 alleged father and the alleged father continues to deny paternity, the alleged father shall file a written
28 objection with the department within 20 days after service of the paternity blood test results. Upon receipt
29 of the written objection, the department shall refer the matter to the district court for a determination based
30 on the contents of the administrative hearing record and any further evidence that may be produced at trial.

~~The matter must be heard by a judge sitting without a jury.~~ Except as otherwise provided in 40-5-231 through 40-5-237, proceedings in the district court must be conducted pursuant to Title 40, chapter 6, part 1.

(2) The administrative record must include:

- (a) a copy of the notice of ~~paternity determination~~ parental responsibility and the return of service of the notice;
- (b) the alleged father's written denial of paternity, if any;
- (c) the transcript of the administrative hearing;
- (d) the paternity blood test results and any report of an expert based on the results; and
- (e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they had been served with a summons and complaint. The department shall serve written notice upon the alleged father, as provided in 40-5-231(2), that the issue of paternity has been referred to the district court for determination.

(4) In a proceeding in the district court, the department shall appear on the issue of paternity only. The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that an appointment is necessary and in the best interest of the child. Neither the mother nor the child is a necessary party, but either may testify as a witness.

(5) No other matter may be joined with an action to determine the existence or nonexistence of the parent and child relationship under this section. The parties shall institute an independent action to address other issues, including visitation and custody.

(6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees for attorneys appointed under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110."

Section 46. Section 40-5-237, MCA, is amended to read:

"40-5-237. District court paternity proceedings -- objection to tests -- additional tests -- expert's report -- admissibility of evidence. (1) In a matter referred to the district court, if an alleged father objects to the procedures for or the results of a paternity blood test, the alleged father shall file a written objection with the court within 20 days after service of the notice required by 40-5-236(3). The court shall order an additional paternity blood test upon the alleged father's advance payment for additional testing if a written

1 objection is timely filed or at the request of the department. THE ALLEGED FATHER'S ADVANCE PAYMENT
2 MUST BE RETURNED TO THE ALLEGED FATHER IF THE TEST DOES NOT PRODUCE EVIDENCE OF THE
3 ALLEGED FATHER'S PATERNITY. An additional test must be performed by the same or another expert who
4 is qualified in paternity blood testing. Failure of the alleged father to make a timely challenge is considered
5 a waiver of any defense to the test results or test procedures, including the chain of custody.

6 (2) If an objection to the paternity blood test is not timely filed, the paternity blood test expert's
7 completed and certified report of the results and conclusions of a paternity blood test is admissible as
8 evidence without additional foundation testimony or other proof of authenticity and accuracy if the
9 laboratory in which the expert performed the test is accredited for parentage testing by the American
10 association of blood banks. Accreditation may be established by verified statement or reference to
11 published sources. This subsection does not limit the right of a party to contest the identity of persons
12 submitting to testing.

13 (3) In any hearing before the court or at trial, testimony relating to sexual intercourse of the mother
14 with any person who has been excluded from consideration as a possible father of the child involved by
15 the results of a paternity blood test is inadmissible in evidence.

16 (4) When a paternity blood test excludes an alleged father from possible paternity, the test is
17 conclusive evidence of nonpaternity of the alleged father for all purposes in the district court."
18

19 **Section 47.** Section 40-5-263, MCA, is amended to read:

20 **"40-5-263. Central clearinghouse -- interstate enforcement services -- powers and duties of the**
21 **department.** (1) The department shall establish a clearinghouse for the registration of all interstate IV-D
22 cases referred to the department by other states. The clearinghouse shall serve as the central point for the
23 receipt and dissemination of information regarding interstate enforcement requests, including but not limited
24 to:

25 (a) petitions under the Revised Uniform Reciprocal Enforcement of Support Act, Uniform Reciprocal
26 Enforcement of Support Act, or the Uniform Interstate Family Support Act; and

27 (b) wage withholding requests under part 4 of this chapter.

28 (2) (a) A case must be referred to the clearinghouse to be processed as a IV-D case and receive
29 the benefits of IV-D status and clearinghouse services.

30 (b) The clearinghouse may accept any interstate IV-D referral made by interstate application or by

petition under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act. An application must be made on forms prescribed by the department.

(3) Upon certification by the initiating state that a case filed in the registry of foreign support orders, including a petition under the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or the Uniform Interstate Family Support Act, is eligible for IV-D services and that the obligor resides, has property, or derives income in this state, the department may: ~~establish or enforce a child support obligation by any appropriate statute, including the remedies in this chapter~~

(a) proceed under Title 40, chapter 5, part 1; or

(b) pursue any other remedy available to it to establish or enforce a support order.

(4) If necessary, the department shall establish the paternity of the child.

(5) The clearinghouse shall:

(a) review and acknowledge receipt of any interstate IV-D referral;

(b) request missing information from the initiating state;

(c) determine appropriate enforcement remedies and forward the referral to the appropriate enforcement unit;

(d) provide status updates to the initiating state, including the location of the responsible enforcement unit;

(e) locate an obligor and the obligor's assets, if necessary; and

(f) initiate a IV-D referral if services are provided by the department to a resident of this state and the obligor resides outside the state.

(6) If the department is providing support enforcement services to a resident of this state, the director or the director's designee may certify any interstate petition, application, and referral, including a petition under part 1 of this chapter.

(7) A lien created by operation of law or issued by order of a court or IV-D agency in another state to enforce a support order may, at the request of the other IV-D agency, be registered with the department. Upon registration, the lien applies to any of the obligor's real and personal property located in this state with the same force and effect as a lien established under 40-5-248. At the request of the other IV-D agency, a registered lien may be enforced by the department using any remedy available to enforce a support lien under 40-5-248."

1 **Section 48.** Section 40-5-264, MCA, is amended to read:

2 **"40-5-264. Cooperative agreements.** (1) The department may enter into cooperative agreements
3 with any person, firm, corporation, association, political subdivision, Indian tribe or tribal organization as
4 defined in 25 U.S.C. 450b, or department of this state as a cooperating contractor to provide enforcement
5 services.

6 (2) A cooperating contractor:

7 (a) shall act as an independent support enforcement contractor if the cooperating contractor
8 provides enforcement services; and

9 (b) may pursue any remedy available to the department, as limited by the terms of the cooperative
10 agreement.

11 (3) The department may refer an enforcement case to a cooperating contractor in the county where
12 the obligor resides."
13

14 **Section 49.** Section 40-5-271, MCA, is amended to read:

15 **"40-5-271. Registration of support orders.** (1) The department ~~shall establish and maintain a~~
16 ~~support order registry.~~

17 ~~(2) The registry must contain the support orders issued by the department.~~

18 ~~(3) In a IV-D case, the department shall, upon the request of the obligor or the obligee, or may~~
19 ~~register a support order of a district court of this state or a support order of a court or administrative agency~~
20 ~~of another state with jurisdiction to enter the order. A certified copy of the order to be registered must~~
21 ~~accompany the written request for registration.~~

22 ~~(4) Upon registration, the support order must be treated in the same manner and have the same~~
23 ~~effect as a support order issued by the department, and an abstract of the order may be filed under the~~
24 ~~provisions of 40-5-227. Review of the order under 40-5-272 is available only when the department is~~
25 ~~providing child support enforcement services for the order.~~ may, for the purpose of review and modification
26 proceedings under 40-5-272 and 40-5-273, register support orders issued by a district court of this state
27 or by a court or administrative agency of another state. Registration of the order under this section does
28 not confer jurisdiction for any purpose other than for the review and modification process.

29 (2) When the department conducts review and modification proceedings, the department shall give
30 the parties notice BY PERSONAL SERVICE OR CERTIFIED MAIL and opportunity to contest registration of

1 the order. A party seeking to vacate the registered order has the burden of proving that the court or
2 agency issuing the order:

3 (a) did not have jurisdiction to enter the order;

4 (b) did not have personal jurisdiction over the party; or

5 (c) did not give the party reasonable notice and opportunity to be heard before the order was
6 entered.

7 (3) (a) As an alternative to any other registration process or remedy available for the enforcement
8 of a support order issued by a court or agency in another state, the department may register the support
9 order under this subsection (3).

10 (b) Registration under this subsection (3) is only for the purpose of enforcement and does not confer
11 jurisdiction for any other purpose such as visitation, custody, or paternity disputes.

12 (c) If an order is registered for enforcement under this subsection (3), the department shall notify
13 the parties to the order of the registration. A copy of the registered order must be included with the notice.
14 The notice must inform the parties:

15 (i) of the amount of any alleged arrearage as of the date of the notice;

16 (ii) that a party may request a hearing to vacate the registration or to assert defense to any alleged
17 arreage for any reason set out in subsection (3)(e);

18 (iii) that a hearing to contest the validity or enforcement of the order must be requested within 20
19 days after service of the notice; and

20 (iv) that failure to contest the validity or enforcement of the registered order in a timely manner will
21 result in confirmation of the order and enforcement of the order and the alleged arrearage and will preclude
22 further contest of the order with respect to any matter that could have been asserted at the hearing.

23 (d) A party seeking to contest the validity or enforcement of a registered order shall request a
24 hearing within 20 days after service of the notice of registration. If a party fails to contest the validity or
25 enforcement of the registered order in a timely manner, the order is confirmed by operation of law. If a
26 party timely requests a hearing to contest the validity or enforcement of the order, the department shall
27 schedule the matter for hearing.

28 (e) A party contesting the validity or enforcement of a registered order or seeking to vacate the
29 registration has the burden of proving one or more of the following defenses:

30 (i) the court or agency issuing the order did not have subject matter jurisdiction to enter the order

1 or lacked personal jurisdiction over the contesting party;

2 (ii) the court or agency issuing the order did not give the party reasonable notice and opportunity
3 to be heard before the order was entered;

4 (iii) the order was obtained by fraud;

5 (iv) the issuing court or agency has stayed enforcement of the order pending appeal;

6 (v) the order has been vacated, suspended, or modified by a later order;

7 (vi) there is a defense under the law of this state to the remedy sought; or

8 (vii) the statute of limitations precludes enforcement of some or all of the arrearages.

9 (f) If the contesting party does not establish a defense under subsection (3)(e) to the validity or
10 enforcement of the order, the department shall issue an order confirming the order. Confirmation of a
11 registered order, whether by operation of law or after notice and hearing, precludes further contest of the
12 order with respect to any matter that could have been asserted at the time of the registration. A confirmed
13 order is enforceable as of the date of confirmation in the same manner as an order issued by the department
14 or a district court of this state.

15 (g) In a proceeding for arrears, the statute of limitations under the laws of this state or of the issuing
16 state, whichever is longer, applies.

17 (h) Hearings under this subsection (3) are subject to the provisions of the Montana Administrative
18 Procedure Act and must initially be conducted by teleconferencing methods. At the request of a party and
19 upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the
20 hearings officer shall, at the close of a teleconference hearing, grant a de novo in-person hearing."

21
22 **SECTION 50. SECTION 40-5-273, MCA, IS AMENDED TO READ:**

23 **"40-5-273. Administrative review of child support orders -- modifying orders. (1) A review**
24 **application setting forth facts meeting any of the criteria for review of a child support order established in**
25 **40-5-272 must be scheduled for an administrative hearing, and a hearings officer must be appointed by the**
26 **department. Unless the hearings officer determines under rules of the department that an in-person hearing**
27 **is necessary, the hearing must be conducted by telephone conference. The order scheduling the hearing**
28 **must be served on the obligor and the obligee at least 60 days before the hearing. The order must include**
29 **the following information as an exception to 2-4-601:**

30 (a) the date and time for the hearing and, if appropriate, the place for the hearing;

1 (b) a statement of the purpose, objectives, and possible consequences of the review;

2 (c) a statement of the right of the obligor and the obligee to request the hearings officer to issue
3 subpoenas compelling the appearance of witnesses and the production of documents for the hearing; and

4 (d) a requirement that the obligor and the obligee provide the hearings officer with telephone
5 numbers at which they and their witnesses may be contacted for the hearing.

6 (2) The hearings officer may issue an order commanding the obligor or the obligee, or both, to
7 produce financial information. The order must be personally served with the order scheduling the hearing.
8 The hearings officer may also issue subpoenas ordering the department or other parties to produce
9 information in their possession about the obligor and the obligee that may be reasonably necessary for
10 application of the guidelines. Any information so obtained by the hearings officer must be provided to the
11 department and other parties prior to the hearing.

12 (3) The requested modification of the order must be determined on the evidence submitted to the
13 hearings officer under the following conditions:

14 (a) If an applicant other than the department fails to provide a telephone number for the hearing
15 or fails to be at the number provided when telephoned for the hearing, the failure is considered a
16 withdrawal of the application.

17 (b) If a party other than the applicant fails to provide a telephone number for the hearing or fails
18 to be at the number provided when telephoned for the hearing, the failure is considered to mean that the
19 party does not oppose the modification.

20 (c) If the department is the applicant and if either the obligor or the obligee, or both, fails to provide
21 a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing,
22 the failure is considered an admission that the party or parties do not oppose the modification.

23 (4) An order entered under the circumstances described in subsection (3)(a), (3)(b), or (3)(c)
24 becomes final within 10 days of issuance unless a party provides the hearings officer an affidavit showing
25 good cause for failure to provide a telephone number or failure to be available for the hearing when
26 telephoned.

27 (5) A provision of law may not be construed to mean that an obligor or an obligee is a client of the
28 department, and the department is not considered a party to the action.

29 (6) (a) In addition to the powers and duties provided by other law, the hearings officer shall, to
30 ensure the equitable determination of a support obligation, during a review hearing:

- 1 (i) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts;
- 2 (ii) introduce evidence on behalf of the parties;
- 3 (iii) apply the guidelines to the facts elicited from the hearing; and
- 4 (iv) inquire as to any circumstances that may require variance from the guidelines.

5 (b) If a party is represented by legal counsel, the hearings officer may allow the counsel to present
6 that party's case.

7 (7) The hearings officer shall determine a support obligation in accordance with the guidelines and
8 shall issue a modifying order. If the hearings officer determines that the difference between the existing
9 support order and the amount determined under the guidelines is negligible under rules issued by the
10 department, the modifying order may not change the amount of the support obligation. Even though the
11 review may indicate that a modification of the support obligation is appropriate, the department may not
12 modify the support order if the hearings officer determines, after the review hearing, that to do so would
13 not be in the best interests of the child under the rules issued by the department. An increase in child
14 support is presumed to be in the best interests of the child unless, after a review hearing, either the obligor
15 or the obligee demonstrates it would not be in the best interests of the child. The modifying order must
16 ~~prospectively~~ modify the underlying support order from the date of service of the order scheduling the
17 hearing and may modify the underlying order from the date found to be the date that the amount required
18 for support decreased. The obligee may be ordered to repay the obligor for any support amount
19 overpayment found to have been paid since the date that the amount required for support decreased. If
20 the case is a IV-D case, the department shall, on request of the obligor, enforce the obligee's repayment
21 of the overpaid amount using any procedure provided in this chapter for payment, enforcement, and
22 collection of child support or a delinquency.

23 (8) The hearings officer shall make a written determination whether health insurance is available
24 to the child of the obligor through the obligor's employment or other group insurance. If the hearings officer
25 determines health insurance is available to the child of the obligor, the hearings officer shall issue a
26 modifying order that requires the obligor to obtain and keep health insurance for the child. If the hearings
27 officer determines that health insurance is not available to the child of the obligor, ~~he~~ the hearings officer
28 shall issue a modifying order containing the notices provided in subsection (9). An order to provide health
29 insurance is presumed to be in the best interests of the child unless, after a review hearing, either the
30 obligor or the obligee demonstrates it would not be in the best interests of the child.

(9) In addition to complying with other requirements of law, the modifying order must include the following notices and warnings:

(a) that the obligor shall keep the department informed of the name and address of ~~his~~ the obligor's current employer and information on health insurance available to the obligor through the obligor's employment or other group insurance;

(b) that the obligor shall obtain and keep health insurance for the child of the obligor whenever it is available through the obligor's employment or other group insurance; and

(c) that the modifying order is subject to future administrative review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D.

(10) Orders entered under this section are final agency decisions, subject to judicial review pursuant to the Montana Administrative Procedure Act. All orders entered under this section must notify the parties that the order is subject to judicial review under Title 2, chapter 4, part 7.

(11) The parties to the support order and the department when it is providing services under IV-D may enforce the support order or modify that order independently, as provided in 40-4-208 and 53-2-613(4)(d)."

Section 51. Section 40-5-274, MCA, is amended to read:

"40-5-274. Child support payments to follow the child. (1) A support order issued or modified under this part must contain a provision requiring the child support obligation to be paid to:

(a) the legal custodian of the minor child;

(b) ~~(i) any other person, organization, or agency having legal physical custody of the minor child or collecting child support on behalf of the minor child under a legal assignment of rights~~ a person, organization, or agency to which the legal custodian voluntarily or involuntarily relinquishes physical custody of the child; or

~~(ii) the court for the benefit of the minor child;~~

(c) ~~any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or~~ to any other person, organization, or agency entitled by law, assignment, or similar reason to receive or collect the child support obligation.

~~(d) any assignee or other person, organization, or agency authorized to receive or collect child~~

1 ~~support.~~

2 (2) If the department is providing services under Title IV-D of the Social Security Act, payment of
3 support must be made through the department for distribution to the person, organization, or agency
4 entitled to the payment.

5 ~~(2)(3)~~ An order that omits the provision required by subsection (1) is subject to the requirements
6 of subsection (1) without need for an amendment to the order or for any further action by the department."
7

8 **Section 52.** Section 40-5-302, MCA, is amended to read:

9 **"40-5-302. Purpose -- applicability.** (1) The purpose of this part is to provide a direct method of
10 deducting money from a person's income for the payment of child support if that person has been
11 delinquent in the payment of court ordered child support.

12 (2) Income withholding under this part is available without amendment of the support order or
13 further action by a district court or other entity, even though the support order did not provide for
14 withholding or provided for other payment arrangements."
15

16 **Section 53.** Section 40-5-303, MCA, is amended to read:

17 **"40-5-303. Petition for income deduction -- who may initiate.** (1) If an obligor is exempted from
18 immediate income withholding under 40-5-315 or is not otherwise subject to an income-withholding order,
19 the obligor's income may be withheld for the payment of child support beginning on the day IF the obligor
20 becomes delinquent in the payment of support, A PERSON OR ENTITY REFERRED TO IN SUBSECTION (2)
21 NOTIFIES THE OBLIGOR THAT INCOME WITHHOLDING WILL BE INITIATED IF THE DELINQUENT AMOUNT
22 IS NOT PAID WITHIN 8 DAYS OF RECEIPT OF THE NOTICE, AND THE OBLIGOR DOES NOT PAY THE
23 DELINQUENT AMOUNT WITHIN THAT TIME. NOTIFICATION THAT INCOME WITHHOLDING WILL BE
24 INITIATED IF A DELINQUENCY IS NOT PAID WITHIN 8 DAYS OF RECEIPT OF THE NOTICE IS NOT
25 NECESSARY IF SUCH A NOTICE WAS GIVEN FOR A PRIOR DELINQUENCY AND THE PRIOR
26 DELINQUENCY IN FACT EXISTED.

27 (2) A petition for an income deduction Income withholding for the payment of delinquent child
28 support payments may be made initiated by:

29 ~~(1)(a)~~ the person named as the recipient of the child support payments in the child support order;

30 ~~(2)(b)~~ the child or the guardian of the child named in the child support order; or

1 ~~(3)(c)~~ the department of public health and human services.

2 (3) (a) At the request of an initiating party who determines that an obligor is delinquent, the clerk
3 of DISTRICT court shall issue an A TEMPORARY AN order for income deductions provided for in 40-5-308
4 for immediate service upon the obligor's payor or payors. The order is limited to current support unless
5 modified to include arrears as provided in 40-5-308.

6 (b) At the same time an income deduction order is issued, the requesting party shall notify the
7 obligor as provided in 40-5-305 that income deductions have been initiated.

8 (4) Deductions under this section for current support may be terminated only if:

9 (a) the district court determines after a hearing that the obligor was not delinquent when the
10 deduction order was issued;

11 (b) the obligation to pay support has terminated and all delinquencies are paid in full; or

12 (c) the department of public health and human services has superseded the deduction order under
13 authority of Title 40, chapter 5, part 4.

14 (5) As used in this part, the following definitions apply:

15 (a) "Employer" includes a payor.

16 (b) (i) "Income" means any form of periodic payment to a person, regardless of source, including
17 commissions, bonuses, workers' compensation, disability benefits, payments under a pension or retirement
18 program, interest and earnings, and wages.

19 (ii) Income does not include:

20 (A) an amount, other than creditor claims, required by law to be withheld, including federal, state,
21 and local taxes and social security; or

22 (B) an amount exempted from judgment, execution, or attachment by federal or state law.

23 (c) "Payor" means any entity that pays income to an obligor on a periodic basis and includes any
24 person, firm, corporation, association, employer, trustee, political subdivision, or state agency or an agent
25 of any one of them, subject to the jurisdiction of the courts of this state under Rule 4B of the Montana
26 Rules of Civil Procedure."

27
28 **Section 54.** Section 40-5-304, MCA, is amended to read:

29 **"40-5-304. When child support payments considered delinquent.** (1) Nonpayment of child support
30 required by ~~any a district court or administrative order of a district court~~ or by a similar order of a court of

1 another jurisdiction becomes delinquent under this part ~~when the amount owed is equal to 3 months of~~
2 ~~child support payments~~ 8 7 8 working days after the last day of the month in which the payment is due.

3 (2) Child support payments may be considered delinquent under this part only in reference to a
4 court or administrative order setting child support payments.

5 (3) ~~In the case of support orders not subject to immediate income withholding under 40-5-315,~~
6 ~~including cases in which the court or administrative authority has made a finding of good cause or~~
7 ~~alternative arrangement, the income of the obligor is subject to withholding under this part beginning on~~
8 ~~the date on which the obligor is found to be delinquent in the payment of support due under a support order~~
9 ~~in an amount equal to at least 3 months' support payments. Intervening agreements or orders establishing~~
10 ~~a schedule for payment of delinquent support do not prevent income withholding under this part. For the~~
11 ~~purposes of this section, "alternative arrangement" has the meaning provided in 40-5-315(3)(b)."~~

12
13 **Section 55.** Section 40-5-305, MCA, is amended to read:

14 **"40-5-305. Notice.** ~~On petition for income deductions for payment of delinquent child support,~~
15 ~~the district court shall cause notice to be served upon the obligor, stating that if the delinquency is not~~
16 ~~discharged within 15 days, the court will order an income deduction for the payment of the delinquent child~~
17 ~~support and for the payment of current child support as it becomes due and payable. The notice shall also~~
18 ~~state that the obligor may contest the allegation that child support payments are delinquent.~~

19 (1) A party initiating income deductions under this part shall serve the obligor with notice if:

20 (a) an order for immediate income deductions is issued because of a delinquency;

21 (b) additional delinquencies accrued subsequent to the issuance of an income-deduction order and
22 the requesting party proposes to add those delinquencies to an existing order for income deductions;

23 (c) immediate withholding under 40-5-315 or delinquency withholding under 40-5-303 has
24 commenced for current support and there are delinquencies due for a period prior to issuance of the
25 income-deduction order that the requesting party proposes to add to the deduction order; or

26 (d) the obligation to pay current support has terminated and there are support arrears still owing
27 for the period prior to termination.

28 (2) The notice must contain a statement:

29 (a) of the amount subject to withholding, including a computation showing the period and total
30 amount of the delinquency as of the date of the notice;

(b) that withholding applies to all current and subsequent payors;

(c) of the procedures to follow if the obligor desires to contest income withholding on the grounds that the initiation of withholding or the modification of an existing order for deductions is improper or that the amount to be deducted is in error due to a mistake of fact; and

(d) of the period of time within which the obligor is required to file a request for hearing and that failure to file the hearing request within the time limit will result in an income-deduction order being served upon the payor for the amount stated in the notice.

(3) The notice must be served upon the obligor personally or by certified mail."

Section 56. Section 40-5-306, MCA, is amended to read:

"40-5-306. Discharge of delinquency. ~~If~~ (1) In a case in which only arrears are owed, if the obligor pays the total amount of child support due and payable in arrears within the 15 days after service of the notice specified in 40-5-305, no an order for deduction may not issue. This discharge of delinquency does not affect or otherwise limit any action as a result of any subsequent delinquencies.

(2) If there is a current support obligation, payment of arrears after service of the order NOTICE OR AFTER SERVICE OF THE INCOME-DEDUCTION ORDER ON THE PAYOR does not prevent the issuance OR CONTINUANCE of an income-deduction order for the payment of current support."

Section 57. Section 40-5-307, MCA, is amended to read:

"40-5-307. Delinquency of child support denied -- hearing. If, within 15 days after service of a notice under 40-5-305, the obligor responds to the notice and denies that child support payments are delinquent income withholding initiated because of a delinquency is proper or denies that the amount or arrearages stated in the notice is owing, the district court shall hold a hearing to determine whether or not there is a deficiency in child support payments sufficient to be delinquent under 40-5-304 income withholding will take place."

Section 58. Section 40-5-308, MCA, is amended to read:

"40-5-308. Order for deduction from income for child support payments. ~~(1) If the obligor fails to respond to notice within 15 days or if the district court determines that the obligor is delinquent in payment of child support as provided in 40-5-304, the district court shall issue an order to the obligor's~~

~~employer ordering a deduction from the obligor's wages or salary for the payment of child support. The~~
court may authorize the requesting party to continue an immediate income-deduction order issued because
of a delinquency or may modify an existing deduction order if:

(a) the obligor fails to timely respond to the notice provided under 40-5-305;

(b) the obligor fails to appear at a scheduled hearing;

(c) the court determines that the obligor is delinquent in the payment of support; or

(d) the court determines THAT THERE WAS A PRIOR INCOME-DEDUCTION ORDER FOR A
DELINQUENCY THAT IN FACT EXISTED OR THAT there are new or additional delinquencies to be added
to an existing deduction order.

(2) The order must state:

(a) the action involved;

(b) the total amount of back child support due and the amount of each court-ordered installment
of child support;

(c) the amount to be deducted from the ~~wages or salary of the obligor each pay period~~ obligor's
income and the amount, if any, allowed to the ~~employer~~ payor under 40-5-309(2) as a fee for handling the
deduction;

(d) the length of time the order is to remain in effect, if ascertainable; and

(e) the name and address of the ~~clerk of court~~ person or entity to whom the deduction is to be paid
by the ~~employer~~ payor."

Section 59. Section 40-5-309, MCA, is amended to read:

"40-5-309. Amount to be deducted from income. (1) (a) The amount of money to be deducted
each pay period from the obligor's income is:

(i) (A) the amount of money necessary to pay current installments of child support as they become
due and payable; plus

(B) the amount of money that, when deducted in equal amounts each pay period, will pay off all
outstanding child support payments delinquent within 2 years; or

(ii) not less than 25% of the obligor's disposable earnings.

(b) If withholding is annualized, when deducted in equal amounts, the amount withheld each pay
period must be sufficient to pay all installments due in a 12-month period under the order to withhold.

(2) The district court may allow a fee of not to exceed \$5 per deduction, which the ~~employer~~ payor may deduct from the obligor's ~~wages or salary~~ income for the expense of administering the deduction.

(3) The total amount to be deducted under subsections (1) and (2) may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b), as amended.

(4) Except as provided in 40-5-315, the child support income deduction must cease when there is no past-due child support owing, unless the district court orders continued income deductions for payment of child support installments as they become due and payable."

Section 60. Section 40-5-310, MCA, is amended to read:

"40-5-310. Priority of income deduction. An order for the deduction of income for the payment of ~~delinquent~~ child support payments takes precedence over any:

- (1) assignment of ~~wages or salary~~ income;
- (2) voluntary deductions from the obligor's ~~wages or salary~~ income; and
- (3) other court-ordered garnishment of ~~wages or salary~~ income."

Section 61. Section 40-5-312, MCA, is amended to read:

"40-5-312. Duties of ~~employers~~ payors. (1) ~~An employer~~ A payor who has been served with an order for deduction under this part shall deduct the amount designated in the order beginning not later than the first pay period that occurs after 14 days from the service of the order. The ~~employer~~ payor shall, within ~~40 & 7~~ working days of the date the obligor is paid, promptly pay the deducted amount as directed by the order. The ~~employer~~ payor shall include with the payment a statement indicating the date the amount was deducted from the obligor's ~~wages or salary~~ income.

(2) Whenever ~~an employer~~ a payor receives more than one ~~wage~~ deduction order from the same district court, the ~~employer~~ payor may combine all amounts deducted into a single payment for that month, with the portion that is attributable to each obligor separately designated.

(3) Whenever there is more than one deduction order against a single obligor the ~~employer~~ payor shall:

(a) honor all ~~wage~~ deduction orders to the extent that the total amount deducted from the obligor's ~~wages or salary~~ income does not exceed the limits set in 40-5-309; and

(b) comply with the orders in the sequence in which they were served upon the ~~employer~~ payor except for ~~income-withholding~~ income-withholding orders issued by the department of public health and human services. Under 40-5-423, orders issued by the department have priority over all other orders without regard to the sequence in which they were served.

(4) The ~~employer~~ payor shall promptly notify the clerk of the district court that issued the deduction order of the termination of the obligor's employment and provide the obligor's last-known address and the name and address of the obligor's new ~~employer~~ payor, if known."

Section 62. Section 40-5-313, MCA, is amended to read:

"40-5-313. Obligor rights protected -- penalties. (1) An employer may not discharge, discipline, or refuse to hire a person because:

(a) the person has a child support obligation;

(b) a withholding order has been issued for the person's ~~wages or salary~~ income; or

(c) proceedings have been initiated under this part.

(2) An employer who violates the provisions of this section may be fined not more than \$100."

Section 63. Section 40-5-314, MCA, is amended to read:

"40-5-314. Civil liability for failure to comply with wage deduction order. (1) ~~An employer~~ A payor who PURPOSELY AND knowingly fails to deduct support money from the obligor's ~~wages or salary~~ income and remit the money ~~to the district court~~ when ordered to do so under this part is liable to the obligee of the support order for any amount up to the accumulated amount the ~~employer~~ payor should have deducted and remitted.

(2) ~~An employer~~ A payor who complies with a deduction order under this part is not liable to the obligor or to any other person claiming rights derived from the obligor for wrongful deductions."

Section 64. Section 40-5-315, MCA, is amended to read:

"40-5-315. Immediate income deductions. (1) Notwithstanding any provision in this part requiring a delinquency as a prerequisite to an order for income deductions, except as provided in subsection (2), the ~~salaries and wages~~ income of a person obligated to pay child support by an order of a district court issued after October 1, 1991, ~~are~~ is subject to an immediate deduction order ~~under 40-5-308~~ on the

effective date of the order, ~~regardless of whether there is a delinquency.~~

(2) An obligor's ~~salaries and wages are~~ income is not subject to deduction under this section in any case in which the district court finds:

(a) that there is good cause not to require immediate deduction; or

(b) that there is an alternative arrangement between the parties for the payment of support that provides sufficient security to ensure compliance with the arrangement.

(3) (a) For the purposes of subsection (2), a finding of good cause not to require immediate deduction must, at a minimum, be based on:

(i) a written determination and explanation by the district court as to why implementation of immediate deductions is not in the best interests of the child; and

(ii) in cases involving the modification of support orders, proof of timely payment of previously ordered support.

(b) As used in subsection (2)(b), "alternative arrangement" means a written agreement that is signed by the obligor and obligee and, in cases in which there is an assignment of support rights under 53-2-613, signed by the department of public health and human services, and that has been approved and entered into the record by the district court that issued or modified the support order.

(4) The clerk of court shall administer immediate income deductions under this section. The clerk of court, at any time after docketing the support order or modification of a support order, at the request of the obligee, and without need for amendment to the support order or for any further action by the district court, shall issue the order for income deductions ~~provided for by 40-5-308~~ for service upon the obligor's ~~employer payor~~. The deduction order must direct the ~~employer payor~~ to promptly deliver the amount deducted to the ~~clerk of court~~ department of public health and human services as provided in [section 5] for distribution to the obligee.

(5) ~~Wage deductions~~ Deductions under this section may be terminated only when:

(a) the obligation to pay support has terminated and all arrearages are paid in full;

(b) the obligor requests termination and the obligee and obligor have entered into an alternative arrangement as set forth in subsection (2)(b); or

(c) the department of public health and human services has superseded the deduction order under authority of Title 40, chapter 5, part 4.

(6) IF A DEDUCTION ORDER IS NOT FOR THE FULL AMOUNT OF EACH SUPPORT PAYMENT AND

1 a delinquency occurs IN THE AMOUNT OF ONE OR MORE PAYMENTS THAT ARE NOT PAID BY INCOME
2 WITHHOLDING subsequent to issuance of an immediate deduction order or if arrearages occur prior to
3 beginning the deductions, the arrearages may be added to the deduction order only after compliance with
4 the notice of hearing requirements of 40-5-305.

5 (7) (a) After October 1, 1991, whenever a support order is registered as provided by 40-5-184 or
6 other law, the support order is subject to immediate orders to deduct income under this section.

7 (b) Withholding income under this section must be imposed when an obligor has ~~wages or salaries~~
8 income derived from within this state and the support order was issued in another state.

9 (8) This section applies only to support orders that are not being enforced by the department of
10 public health and human services under Title IV-D of the Social Security Act. The withholding of income
11 for support orders being enforced by the department is provided for in Title 40, chapter 5, part 4, and those
12 procedures, if applicable, supersede the provisions of this section."

13
14 **Section 65.** Section 40-5-403, MCA, is amended to read:

15 **"40-5-403. Definitions.** As used in this part, the following definitions apply:

16 (1) "Alternative arrangement" means a written agreement signed by the obligor and obligee, and
17 signed by the department in the case of an assignment of rights under 53-2-613, that has been approved
18 and entered in the record of the court or administrative authority issuing or modifying the support order.

19 (2) "Department" means the department of public health and human services provided for in
20 2-15-2201.

21 (3) "Employer" includes a payor.

22 ~~(3)(4)~~ (4) "Income" means any form of periodic payment to a person, regardless of source, including
23 commissions, bonuses, workers' compensation, disability payments, payments under a pension or
24 retirement program, interest, and earnings and wages. However, income does not include:

25 (a) any amount required by law to be withheld, other than creditor claims, including federal, state,
26 and local taxes and social security; and

27 (b) any amounts exempted from judgment, execution, or attachment by federal or state law.

28 ~~(4)(5)~~ (5) "Obligee" means either a person to whom a duty of support is owed or a public agency of
29 this or another state to which a person has assigned the right to receive current and accrued support
30 payments.

1 ~~(5)(6)~~ "Obligor" means a person who owes a duty to make payments under a support order.

2 ~~(6)(7)~~ "Payor" means any payor of income to an obligor on a periodic basis and includes any
3 person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent
4 thereof, who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules
5 of Civil Procedure.

6 ~~(7)(8)~~ "Support order" means an order of the district court of the state of Montana, an order of a
7 court of appropriate jurisdiction of another state, an administrative order established pursuant to
8 proceedings under part 2 of this chapter, or an order established by administrative hearing process of an
9 agency of another state with functions similar to those of the department set forth in part 2 of this chapter,
10 that provides a set and determinable amount for temporary or final periodic payment of funds for the
11 support of a child. Support order further includes the following:

12 (a) an order for reimbursement of public assistance money paid by a public agency for the benefit
13 of a minor child;

14 (b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial
15 parent of a child for whom child support is ~~awarded under the same order~~ collected under this chapter; and

16 (c) an order requiring payment of interest due on unpaid judgments for child support."
17

18 **Section 66.** Section 40-5-404, MCA, is amended to read:

19 **"40-5-404. Other remedies available. (1) (a)** The remedies provided in this part are in addition
20 to and not in substitution for any other remedy that may otherwise be available to the department, and the
21 department may simultaneously pursue other remedies to enforce a support obligation or to collect support
22 arrearages.

23 (b) If the department is enforcing a support order of another state, an Indian tribe, or a foreign
24 country under this part, the department may proceed under Title 40, chapter 5, part 1.

25 (2) (a) The department may enforce a support order of another state, an Indian tribe, or a foreign
26 country under this part without registration of the support order under 40-5-180, 40-5-271, or any other
27 law providing for registration of support orders.

28 (b) If the department is enforcing an order under subsection (2)(a), in addition to those defenses
29 available under this part, a party may contest the validity of the support order by proving any defense
30 contained in 40-5-190."

1 **Section 67.** Section 40-5-412, MCA, is amended to read:

2 **"40-5-412. Delinquency income withholding.** (1) (a) In the case of support orders not subject to
3 immediate income withholding under 40-5-411, including cases in which the court or administrative
4 authority has made a finding of good cause or determines that an alternative arrangement exists, the
5 income of the obligor is subject to withholding under this part beginning on the ~~date on which the obligor~~
6 ~~is found to owe unpaid support under the support order in an amount equal to or in excess of 1 month's~~
7 ~~support payment~~ day the obligor becomes delinquent in the payment of support. ~~Intervening agreements~~
8 ~~or orders establishing a schedule for payment of delinquent support do not prevent income withholding~~
9 ~~under this part.~~

10 (b) For purposes of this section, an obligor becomes delinquent 8 working days after the last day
11 of the month in which the payment is due.

12 (c) Agreements or orders establishing a schedule for payment of delinquent support do not prevent
13 income withholding under this part.

14 (2) (a) If the department determines that an obligor is delinquent, THE DEPARTMENT MAY NOTIFY
15 THE OBLIGOR THAT INCOME WITHHOLDING WILL BE INITIATED IF THE DELINQUENT AMOUNT IS NOT
16 RECEIVED WITHIN 8 DAYS OF RECEIPT OF THE NOTICE. IF THE OBLIGOR DOES NOT PAY THE
17 DELINQUENT AMOUNT WITHIN THAT TIME, the department may immediately send an order to withhold
18 income to any payor. NOTIFICATION THAT INCOME WITHHOLDING WILL BE INITIATED IF THE
19 DELINQUENT AMOUNT IS NOT RECEIVED WITHIN 8 DAYS OF RECEIPT OF THE NOTICE IS NOT
20 NECESSARY IF SUCH A NOTICE WAS GIVEN FOR A PRIOR DELINQUENCY AND THE PRIOR
21 DELINQUENCY IN FACT EXISTED. The order must be limited to current support unless modified to include
22 arrears as provided in 40-5-413.

23 (b) At the same time an order to withhold income is sent to a payor, the department shall notify
24 the obligor as provided in 40-5-413 that income withholding has been initiated.

25 ~~(2)(3)~~ (3) Notwithstanding the provisions of subsection (1), income withholding must be initiated,
26 without regard to whether there is ~~an arrearage~~ a delinquency, on the earlier of:

27 (a) the date the obligor requests that withholding begin; or

28 (b) at the request of the obligee if the obligor is found, after an opportunity for hearing under
29 40-5-414, to be delinquent under the terms of an alternative arrangement for the payment of support.

30 ~~(3)(4)~~ (4) To accomplish the purpose of subsection (1), the department shall monitor all support

payments not otherwise subject to immediate withholding. To facilitate monitoring, the department by written notice to the obligor may direct an obligor ~~who does not owe unpaid child support equal to or in excess of 1 month's support payment~~ to pay all support through the department, notwithstanding a court order directing payments to be made to the obligee or clerk of court.

~~(4)~~(5) The only basis for contesting withholding under this section is a mistake of fact, which includes a mistake:

- (a) concerning the obligor's identity;
- (b) concerning the existence of the support obligation;
- (c) concerning the amount of support to be paid;
- (d) in the determination that the ~~delinquent support amounts owed are equal to or greater than 1 month's support payment~~ obligor is delinquent in the payment of support;
- (e) in computation of delinquent support amounts owed; or
- (f) in the allegation that the obligor is in default of an alternative agreement.

(6) A mistake of fact under subsection (5) does not include mistakes relating to issues of paternity or establishment of custody and visitation."

Section 68. Section 40-5-413, MCA, is amended to read:

"40-5-413. Notice of intent to withhold income WITHHOLDING. (1) ~~Prior to service of an initial order or a modification of an existing order on the payer under 40-5-415, the~~ The department shall serve upon the obligor with a notice of the intended action ~~when if~~:

- (a) income withholding is initiated ~~under 40-5-412~~ because of a delinquency;
- (b) additional arrearages ~~have~~ accrued subsequent to the issuance of an order to withhold and the department proposes to add those arrearages to ~~the~~ an existing withholding order; or
- (c) immediate withholding or delinquency withholding has commenced for current support and there are arrearages due for a period prior to entry of the order to withhold that the department proposes to add to the withholding order.

(2) The notice must contain a statement:

- (a) of the amount ~~to be withheld~~ subject to withholding, including a computation showing the period and total amount of the arrearages as of the date of the notice;
- (b) that withholding applies to all current and subsequent payors;

(c) ~~of the obligor's right to a hearing under 40-5-414 to contest the initiation of income withholding or modification of an existing order on the ground that the intended action is not proper because of mistake of fact, as provided in 40-5-412(4) of the procedures to follow if the obligor desires to contest income withholding on the grounds that the initiation of withholding or the modification of an existing withholding order is improper or that the amount to be withheld is in error due to a mistake of fact, as provided in 40-5-412;~~

(d) of the period of time within which the obligor ~~must~~ is required to file a request for a hearing and that failure to file a request ~~the hearing~~ within the time limit will result in income withholding orders being served upon the payor for the amount stated in the notice; and

(e) in those cases in which withholding is being initiated at the request of an obligee without regard to whether there is an arrearage as provided in 40-5-412~~(2)~~(3), a statement that the obligor can require the obligee to appear and show proof that the obligor is not meeting the terms of the alternative arrangement.

(3) The notice must be served upon the obligor personally or by certified mail."

Section 69. Section 40-5-414, MCA, is amended to read:

"40-5-414. Hearing. (1) (a) To contest the withholding of income initiated ~~under 40-5-412~~ because of a delinquency or the modification of an existing order to withhold, an obligor may within 10 days of being served with notice of ~~intent to withhold~~ income WITHHOLDING under 40-5-413 file with the department a written request for an administrative hearing to be held pursuant to the contested case provisions of Title 2, chapter 4, part 6.

(b) The obligor shall include with the hearing request a statement of one or more of the grounds for contesting income withholding provided in 40-5-412. If the hearing request fails to include that statement, the hearings officer may deny the hearing for failure to state an issue upon which a hearing may be granted.

(2) Venue for the administrative hearing may be in the county where the obligor resides if the obligor resides in this state, the county in which the payor or the payor's agent is located, or the county in which the department or any of its regional offices is located.

(3) The ~~administrative~~ hearing must initially be held by teleconferencing methods ~~unless the obligor or the department expressly requests an in-person hearing before the hearings examiner and is subject to the Montana Administrative Procedure Act. At the request of a party and OR upon a showing that the~~

~~party's case was substantially prejudiced by lack of an in-person hearing, the hearings officer shall grant a de novo in-person hearing.~~

(4) If the obligor ~~requests~~ files a timely request for a hearing; ~~within the 10-day period;~~

~~(a)(A) that includes a statement showing a probable mistake of fact, the initiation of delinquency income withholding by the department and the modification of an existing withholding order must~~ may be stayed upon written request of the obligor until conclusion of the hearing or the date of the hearing if the obligor fails to appear at the scheduled hearing. However, ~~in a proceeding to initiate income withholding,~~ if the obligor is only contesting an arrearage amount and is not contesting withholding for current support, income withholding for current support is not stayed. In a proceeding to modify an existing order, income withholding under the existing order to withhold is not stayed.

~~(b) the department shall, within 45 days of the service of the notice of intent to withhold income, inform the obligor of the hearing results concerning whether income withholding will take place.~~

(B) UNLESS GOOD CAUSE IS FOUND, THE DEPARTMENT SHALL, WITHIN 60 DAYS OF RECEIPT OF A REQUEST FOR A HEARING, CONDUCT A HEARING. UNLESS GOOD CAUSE IS FOUND, WITHIN 60 DAYS AFTER A HEARING IS HELD, ANY POST-HEARING BRIEFS ARE RECEIVED, AND ALL EVIDENCE HAS BEEN PROVIDED TO THE DEPARTMENT CONCERNING A NOTICE OF INTENT TO WITHHOLD INCOME, THE DEPARTMENT SHALL INFORM THE OBLIGOR WHETHER INCOME WITHHOLDING MUST TAKE PLACE.

(5) The department ~~shall issue an order to~~ may continue an order to withhold income issued because of a delinquency or a modified may modify an existing order to withhold in accordance with ~~40-5-415 if:~~

(a) the obligor fails to file a timely written request for hearing ~~with the department within the specified 10-day period~~ that includes the statement showing a mistake of fact;

(b) the obligor fails to appear at a scheduled hearing;

(c) the hearings examiner determines from the evidence that the obligor ~~owes unpaid support equal to or in excess of 1 month's support obligation and the amount of arrearages owing is determined and adjudged to be a fixed and certain sum~~ is delinquent in the payment of support;

(d) there is an existing order to withhold and if the hearings examiner determines from the evidence that the obligor owes new or additional amounts in arrears OR IF THERE WAS A PRIOR ORDER THAT IS NO LONGER IN EFFECT FOR A DELINQUENCY THAT IN FACT EXISTED; or

(e) in cases in which income withholding is being initiated at the request of an obligee without

1 regard to whether there is an arrearage, the hearings examiner determines from the evidence that the
2 obligor did not meet the terms of the alternative arrangement.

3 (6) For purposes of the hearing process, arrearages of support must be computed on the basis of
4 the amount owed and unpaid on the date on which the obligor ~~was served with the notice of intent to~~
5 ~~withhold income~~ BECAME DELINQUENT. When ~~the department is enforcing a current support obligation~~
6 income withholding is initiated because of a delinquency, payment of the arrearage after service of the
7 notice or after service of an order to withhold on a payor is not a basis for not initiating or continuing
8 income withholding. WHENEVER THE NOTICE OF INTENT TO WITHHOLD INCOME WITHHOLDING IS
9 ISSUED BECAUSE AN ARREARAGE HAS ACCRUED OR ADDITIONAL INCOME IS BEING WITHHELD TO
10 SATISFY ADDITIONAL ARREARAGES, UNLESS GOOD CAUSE IS FOUND, WITHIN 60 DAYS AFTER A
11 HEARING IS HELD, ANY POST-HEARING BRIEFS ARE RECEIVED, AND ALL EVIDENCE HAS BEEN
12 PROVIDED, THE DEPARTMENT SHALL INFORM THE OBLIGOR WHETHER INCOME WITHHOLDING MUST
13 TAKE PLACE.

14 (7) ~~In a case initiated because an arrearage has accrued or because additional income is being~~
15 ~~withhold to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to~~
16 ~~withhold income, must be informed of the hearing decision on whether income withholding will take place.~~

17 (8)(7) If the obligor fails to request a hearing within 10 days after service of the notice of intent
18 to withhold INCOME WITHHOLDING or fails to appear at a scheduled hearing or if the hearings examiner
19 determines that the obligor owes ~~a combination of unpaid support equal to or in excess of 1 month's~~
20 ~~support obligation~~ unpaid support or determines that a modification of an existing order is proper, the
21 department shall ~~proceed with the intended action~~ issue an order to CONTINUE TO withhold income in
22 accordance with 40-5-415."

23
24 **Section 70.** Section 40-5-421, MCA, is amended to read:

25 **"40-5-421. Duties of payor.** (1) A payor who has been served with an order to withhold and
26 deliver income shall deduct the amount designated in the order beginning not later than the first pay period
27 that occurs after ~~14 days from the~~ service of the order. The payor shall, within ~~10~~ 7 working days of the
28 date the obligor is paid, promptly deliver the amount withheld to the department as directed by the order
29 or in accordance with any subsequent modification of the order received from the department. The payor
30 shall include with the payment a statement indicating the date the amount was withheld from the obligor's

1 income.

2 (2) Whenever the payor is obligated to withhold income for more than one obligor, the payor may
3 combine all amounts withheld into a single payment for that month with the portion ~~thereof which~~ of the
4 withholding that is attributable to each obligor separately designated.

5 (3) Whenever there is more than one order for withholding against a single obligor, the payor ~~must~~
6 shall comply with the orders in the sequence in which they were served upon the payor and ~~must~~ shall
7 honor all withholding orders to the extent that the total amount withheld from the obligor's wages or salary
8 does not exceed the limits set in 40-5-416.

9 (4) The payor ~~must~~ shall promptly notify the department of the termination of the obligor's
10 employment or other source of income and provide the obligor's last-known address and the name and
11 address of the obligor's new employer or other source of income, if known to the payor."

12
13 **Section 71.** Section 40-5-423, MCA, is amended to read:

14 **"40-5-423. Priority of income withholding.** An order to withhold and deliver income under this part
15 takes priority over any:

16 (1) wage or income deduction order under any other state law and any income-withholding order
17 issued in another state and sent to a payor in this state;

18 (2) voluntary or involuntary assignment of wages;

19 (3) other voluntary deductions from the obligor's income;

20 (4) levies, writs of execution, or garnishments of the obligor's income; and

21 (5) any other claims by creditors."
22

23 **Section 72.** Section 40-5-443, MCA, is amended to read:

24 **"40-5-443. Payors to provide information -- exemption from liability.** (1) For the purposes of this
25 part, upon written request by the department or by another IV-D agency, a payor or former payor and any
26 labor union of which the obligor or obligee is or may have been a member shall provide the ~~department~~
27 requester with the following information, if known, regarding the obligor or obligee:

28 (a) last-known residential address;

29 ~~(b) social security number;~~

30 ~~(c)~~ (B) dates of employment or union membership;

1 ~~(d)~~(C) amounts of wages, salaries, commissions, contract proceeds, and other earnings or amounts
2 paid;

3 ~~(e)~~(D) whether health insurance coverage is or was available through the payor or union and, if so:

4 (i) the name of the insurer or health care provider;

5 (ii) the policy numbers or other identifiers; and

6 (iii) the persons covered; and

7 ~~(f)~~(E) names, telephone numbers, and addresses of current and former employers, payors, and
8 unions.

9 (2) A payor or labor union that discloses information ~~to the department~~ in compliance with this
10 section is exempt from any liability to the obligor or obligee that may result from the disclosure.

11 (3) Failure to disclose information in compliance with this section subjects the payor or labor union
12 to the sanctions provided in 40-5-226.

13 (4) THE REQUESTER SHALL KEEP THE INFORMATION PROVIDED UNDER SUBSECTION (1)
14 CONFIDENTIAL EXCEPT FOR PURPOSES OF TITLE IV-D OF THE SOCIAL SECURITY ACT."

15
16 **Section 73.** Section 40-5-701, MCA, is amended to read:

17 **"40-5-701. Definitions.** As used in this part, the following definitions apply:

18 (1) (a) "Child" means:

19 (i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member
20 of the armed forces of the United States;

21 (ii) a person under 19 years of age who is still in high school;

22 (iii) a person who is mentally or physically incapacitated when the incapacity began prior to that
23 person reaching 18 years of age; and

24 (iv) in IV-D cases, a person for whom:

25 (A) support rights are assigned under 53-2-613;

26 (B) a public assistance payment has been made;

27 (C) the department is providing support enforcement services under 40-5-203; or

28 (D) the department has received a referral for interstate services from an agency of another state
29 under the provisions of the Uniform Interstate Family Support Act, the Revised Uniform Reciprocal
30 Enforcement of Support Act, the Uniform Reciprocal Enforcement of Support Act, or under Title IV-D of

the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support extending beyond the time the child reaches 18 years of age.

(2) "Delinquency" means a support debt or support obligation due under a support order in an amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a license.

(3) "Department" means the department of public health and human services.

(4) "IV-D case" means a case in which the department is providing support enforcement services as a result of:

(a) an assignment of support rights under 53-2-613;

(b) a payment of public assistance;

(c) an application for support enforcement services under 40-5-203; or

(d) a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or under Title IV-D of the Social Security Act.

(5) "License" means a license, certificate, registration, permit, or any other authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, ~~or~~ profession, recreational activity, or any other privilege that is subject to suspension, revocation, forfeiture, ~~or~~ termination, or a declaration of ineligibility to purchase by the licensing authority prior to its date of expiration.

(6) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

(7) "Obligee" means:

(a) a person to whom a support debt or support obligation is owed; or

(b) a public agency of this or another state that has the right to receive current or accrued support payments or that is providing support enforcement services under this chapter.

(8) "Obligor" means a person who owes a duty of support or who is subject to a subpoena or warrant in a paternity or child support proceeding.

(9) "Order suspending a license" means an order issued by a support enforcement entity to

1 suspend a license. The order must contain the name of the obligor, AND the type of license, ~~and, if known,~~
2 ~~the social security number of the obligor.~~

3 (10) "Payment plan" includes but is not limited to a plan approved by the support enforcement
4 entity that provides sufficient security to ensure compliance with a support order and that incorporates
5 voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic
6 payment of a support debt and, if applicable, current and future support.

7 (11) "Recreational activity" means an activity for which a license or permit is issued by the
8 department of fish, wildlife, and parks under Title 87, chapter 2, part 6 or 7, except 87-2-708 or 87-2-711,
9 or under sections 87-2-505, 87-2-507, 87-2-508, or 87-2-510.

10 (12) "Subpoena" means a writ or order issued by a district court or the department in a proceeding
11 or as part of an investigation related to the paternity or support of a child that commands a person to
12 appear at a particular place and time to testify or produce documents or things under the person's control.

13 ~~(12)~~(13) "Support debt" or "support obligation" means the amount created by:

14 (a) the failure to provide support to a child under the laws of this or any other state or a support
15 order; or

16 (b) a support order for spousal maintenance if the judgment or order requiring payment of
17 maintenance also contains a judgment or order requiring payment of child support for a child for whom the
18 person awarded maintenance is the custodial parent.

19 ~~(12)~~(14) "Support enforcement entity" means:

20 (a) in IV-D cases, the department; or

21 (b) in all other cases, the district court that entered the support order or a district court in which
22 the support order is registered.

23 ~~(13)~~(15) "Support order" means an order that provides a determinable amount for temporary or final
24 periodic payment of a support debt or support obligation and that may include payment of a determinable
25 or indeterminable amount for insurance covering the child issued by:

26 (a) a district court of this state;

27 (b) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

28 (c) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

29 (d) an administrative agency of another state with a hearing function and process similar to those
30 of the department.

(16) "Suspension" includes the withdrawal, withholding, revocation, forfeiture, or nonissuance of a license and license privileges.

(17) "Warrant" means a bench warrant, a warrant to appear, an order to show cause, or any other order issued by the district court relating to the appearance of a party in a paternity or child support proceeding."

Section 74. Section 40-5-702, MCA, is amended to read:

"40-5-702. Notice of intent to suspend license. (1) Upon the petition of an obligee alleging the existence of a delinquency or upon the failure of an obligor to comply with a subpoena or warrant, a support enforcement entity may issue a notice of intent to suspend a license.

(2) The notice must be served upon the obligor personally or by certified mail and may:

(a) in a IV-D case, be incorporated into any notice served under Title 17, chapter 4, part 1, or Title 40, chapter 5, part 2 or 4;

(b) in all other cases, be combined with any other enforcement proceeding.

(3) The notice must state that the obligor's license will be suspended 60 days after service unless within that time the obligor:

(a) pays the entire support debt stated in the notice;

(b) enters into a payment plan approved by the support enforcement entity; ~~or~~

(c) complies with the subpoena or warrant; or

~~(d)~~ (d) appears and shows cause in a hearing before the support enforcement entity under 40-5-703 that suspension of a license is not appropriate.

(4) In a IV-D case, the notice must advise the obligor that hearings conducted under 40-5-703 are subject to the contested case provisions of the Montana Administrative Procedure Act."

Section 75. Section 40-5-703, MCA, is amended to read:

"40-5-703. Hearing -- order suspending license. (1) To show cause why suspension of a license would not be appropriate, the obligor shall request a hearing from the support enforcement entity that issued the notice of intent to suspend the license. The request must be made within 60 days of the date of service of the notice.

(2) Upon receipt of a request for hearing from an obligor, the support enforcement entity shall

1 schedule a hearing for the purpose of determining if suspension of the obligor's license is appropriate. The
2 support enforcement entity shall stay suspension of the license pending the outcome of the hearing.

3 (3) The only issues that may be determined in a hearing under this section are the amount of the
4 support debt or support obligation, if any, whether or not a delinquency exists, ~~and~~ whether or not the
5 obligor has entered into a payment plan, and whether or not the obligor failed to comply with a subpoena
6 or warrant.

7 (4) If an obligor fails to respond to a notice of intent to suspend a license, fails to timely request
8 a hearing, or fails to appear at a regularly scheduled hearing, the obligor's defenses, objections, or request
9 for a payment plan must be considered to be without merit and the support enforcement entity shall enter
10 a final decision and order accordingly.

11 (5) If the support enforcement entity determines that the obligor owes a delinquency and that the
12 obligor has not entered into a payment plan or that the obligor failed to comply with a subpoena or warrant,
13 the support enforcement entity shall issue an order suspending the obligor's license and ordering the obligor
14 to refrain from engaging in the licensed activity. The support enforcement entity shall send a copy of the
15 order suspending a license to ~~the licensing authority and the obligor~~ and shall notify the licensing authority
16 in writing of the suspension. Notification to the licensing authority is not required if the support
17 enforcement entity has previously suspended the license of the obligor and the suspension is still in effect.

18 (6) The determinations of the department under this section are a final agency decision and are
19 subject to judicial review under 40-5-253 and the Montana Administrative Procedure Act.

20 (7) A determination made by the support enforcement entity under this part is independent of any
21 proceeding of the licensing authority to suspend, revoke, deny, terminate, or renew a license."

22
23 **Section 76.** Section 40-5-704, MCA, is amended to read:

24 **"40-5-704. Suspension, denial, and nonrenewal of licenses.** (1) Upon receipt of ~~an order~~
25 ~~suspending a license~~ the notice of suspension of the license under 40-5-703(5), a licensing authority shall
26 implement the suspension of the license by:

- 27 (a) determining if it has issued a license to the obligor whose name appears on the ~~order~~ notice;
28 (b) entering the suspension on the appropriate records;
29 (c) reporting the suspension as appropriate; ~~and~~
30 (d) ~~denying~~ MAKING GOOD FAITH EFFORTS TO DENY recreational activity licenses for the next

1 applicable license year; and

2 ~~(d)~~(e) if required by law, demanding surrender of the suspended license.

3 (2) An order issued by a support enforcement entity under 40-5-703 suspending a license and the
4 notice of suspension given under 40-5-703(5) must be processed by the licensing authority without an
5 additional review or hearing involving the licensing authority concerning suspension of the license.

6 (3) Notwithstanding the provisions of any other law setting terms of suspension, revocation, denial,
7 termination, or renewal of a license, an order issued by a support enforcement entity suspending a license
8 must be implemented by the licensing authority and continues until the support enforcement entity advises
9 the licensing authority that the suspension has been stayed or terminated.

10 (4) In the event that a license is suspended, any funds paid by the obligor to the licensing authority
11 for costs related to issuance, renewal, or maintenance of a license may not be refunded to the obligor.

12 (5) Unless an order staying suspension of a license is in effect, an obligor who continues to engage
13 in the business, occupation, profession, recreational activity, or other licensed activity while the obligor's
14 license is suspended under this section is guilty of a misdemeanor and upon conviction shall be punished
15 by a fine of not less than \$250 or more than \$500 or by imprisonment in the county jail for a term not to
16 exceed 6 months, or both. Upon conviction of a second or subsequent violation, the obligor shall be
17 punished by a fine of not less than \$500 or more than \$2,000 or by imprisonment in the county jail for a
18 term not to exceed 1 year, or both. The support enforcement entity or the licensing authority may elect the
19 remedy under this section or any other remedy provided for engaging in a licensed activity without a license
20 or while the license is suspended.

21 (6) The licensing authority is exempt from liability to the licensee for activities conducted in
22 compliance with this part.

23 (7) The licensing authority has no jurisdiction to modify, remand, reverse, vacate, or stay the order
24 of the support enforcement entity suspending a license.

25 (8) To the extent that inconsistencies exist between this part and the procedural requirements for
26 suspension of a license issued by the department, this part supersedes those requirements."

27
28 **Section 77.** Section 40-5-709, MCA, is amended to read:

29 **"40-5-709. Nondisciplinary suspension for failure to pay child support.** Notwithstanding any other
30 provision of this title, the ~~department~~ support enforcement entity has the authority to suspend a license or

1 privilege to obtain a license under this part without any action by the licensing authority. The licensing
2 authority shall, upon receipt of ~~an order issued by~~ notice of suspension of the license under 40-5-703(5)
3 from the support enforcement entity, suspend the license or privilege to obtain a license of the named
4 individual. The suspension must be nondisciplinary for professional or occupational licenses, and the
5 provisions of 2-4-631 do not apply."

6
7 **Section 78.** Section 40-5-710, MCA, is amended to read:

8 **"40-5-710. Stay of suspension of license -- payment plan -- hardship.** (1) An obligor may at the
9 time of the hearing conducted under 40-5-703 or, except for a recreational activity license, at any time after
10 the hearing, petition the support enforcement entity for an order staying suspension of the license.

11 (2) The support enforcement entity shall consider the obligor's petition for a stay separately from
12 any determination on whether suspension of a license is appropriate.

13 (3) The support enforcement entity may stay suspension of a license upon a showing that
14 suspension or continued suspension of a license would create a significant hardship to the obligor, to the
15 obligor's employees, to legal dependents residing in the obligor's household, or to persons, businesses, or
16 other entities served by the obligor.

17 (4) A stay terminates upon:

18 (a) termination of the circumstances upon which a hardship is based;

19 (b) failure by the obligor to abide by the terms and conditions of a payment plan; or

20 (c) the date of termination, if any, provided in the order staying suspension of the license.

21 (5) If the licensing authority has been notified of an order suspending a license, the support
22 enforcement entity shall notify the licensing authority of any stay or reinstatement unless the support
23 enforcement entity has suspended the license of the obligor for another delinquency or for failure to comply
24 with a subpoena or warrant and the suspension for the other delinquency or failure to comply with a
25 subpoena or warrant is still in effect. The support enforcement entity shall send a copy of any order
26 staying or reinstating suspension of the license to the ~~licensing authority and the~~ obligor.

27 (6) (a) Upon receipt of ~~an order~~ a notice staying or reinstating suspension of the license, the
28 licensing authority shall:

29 (i) enter the information on appropriate records;

30 (ii) report the action as appropriate; and

(iii) demand surrender of the suspended license or return the reinstated license.

(b) Further action by the licensing authority is not necessary to implement the stay or reinstatement of suspension of the license."

Section 79. Section 40-5-711, MCA, is amended to read:

"40-5-711. Termination of order to suspend license. (1) ~~When~~ Except as provided in subsection (3), when the support enforcement entity determines that the support debt or support obligation is paid in full or the obligor has complied with the subpoena or warrant, it shall terminate the order suspending the license. The support enforcement entity shall send a copy of the order terminating the suspension of the license to the ~~licensing authority and the~~ obligor.

(2) Entry of an order terminating suspension of a license does not limit the ability of a support enforcement entity to issue a new order suspending the license of the same obligor in the event of another delinquency or failure to comply with a subpoena or warrant.

(3) A suspension of a recreational activity license is effective for the license year. The suspension does not terminate if the support enforcement entity determines that the support debt or support obligation is paid in full or the obligor has complied with the subpoena or warrant."

Section 80. Section 40-6-102, MCA, is amended to read:

"40-6-102. Definitions. As used in this part, the following definitions apply:

(1) "Blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. The genetic markers may be identified from a person's blood or a tissue sample. The blood or tissue sample may be taken by blood drawing, buccal swab, or any other method approved by the American association of blood banks. A blood test may include but is not limited to the human leukocyte antigen test and DNA probe technology.

(2) "Parent and child relationship" means the legal relationship existing between a child and the child's natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

(3) "Support judgment" or "support order" means an order, whether temporary or final, that provides for the periodic payment of an amount of money expressed in dollars for the support of a child,

1 including medical and health needs, child care, education, recreation, clothing, transportation, and other
2 related expenses and costs specific to the needs of the child."

3
4 **Section 81.** Section 40-6-105, MCA, is amended to read:

5 **"40-6-105. Presumption of paternity.** (1) A person is presumed to be the natural father of a child
6 if any of the following occur:

7 (a) the person and the child's natural mother are or have been married to each other and the child
8 is born during the marriage or within 300 days after the marriage is terminated by death, annulment,
9 declaration of invalidity, or divorce or after a decree of separation is entered by a court;

10 (b) before the child's birth, the person and the child's natural mother have attempted to marry each
11 other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or
12 could be declared invalid, and:

13 (i) if the attempted marriage could be declared invalid only by a court, the child is born during the
14 attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity,
15 or divorce; or

16 (ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after
17 the termination of cohabitation;

18 (c) after the child's birth, the person and the child's natural mother have married or attempted to
19 marry each other by a marriage solemnized in apparent compliance with law, although the attempted
20 marriage is or could be declared invalid, and:

21 (i) the child's mother and the child's alleged father have acknowledged the alleged father's
22 paternity of the child in writing in accordance with subsection (1)(e) and the acknowledgment is filed with
23 the department of public health and human services ~~or with the district court for the county where the~~
24 ~~person resides or for any county where the child support enforcement division of the department of public~~
25 ~~health and human services maintains a regional office;~~

26 (ii) with the person's consent, the person is named as the child's father on the child's birth
27 certificate; or

28 (iii) the person is obligated to support the child under a written voluntary promise or by court order;

29 (d) while the child is under the age of majority, the person receives the child into the person's home
30 and openly represents the child to be the person's natural child;

(e) the child's mother and the child's alleged father acknowledge the alleged father's paternity of the child in a paternity acknowledgment form that is provided by the department of public health and human services ~~and filed with the department or with the district court of the county where the person resides or for any county where the child support enforcement division of the department of public health and human services maintains a regional office.~~ The department of public health and human services ~~or the district court~~ shall accept and file the completed form. As a part of a voluntary acknowledgment process, the department of public health and human services shall ~~provide~~ make written and oral information available to the parents regarding the rights and responsibilities of acknowledging paternity. If another person is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted. The presumption of paternity is created when the acknowledgment is filed with the department.

(f) the scientific evidence resulting from a blood test, whether ordered by a court or administrative agency of competent jurisdiction or agreed to by the parties, shows a 95% or higher statistical probability of paternity;

(g) the person is presumed to be the child's natural father under the laws of the state or Indian territory in which the child was born.

(2) An acknowledgment is binding on a parent who executes it, whether or not the parent is a minor.

(3) A Except for presumptions of paternity that are conclusive or irrebuttable under subsections (1)(g) and (5), a presumption under this section may be rebutted:

(a) in an appropriate action by a preponderance of the evidence; or

(b) by scientific evidence resulting from a blood test that excludes the person as the child's natural parent.

(4) (a) A presumption of paternity established under this section is a sufficient basis for establishing a support order.

(b) If a presumption is later rebutted or set aside and the person is under an order to pay support for the child, the person may only be relieved of support installments that accrued from the date of the order declaring the presumption to be rebutted.

(5) (a) An acknowledgment of paternity under subsection (1)(e) may be rescinded by a signatory at any time within 60 days after it was signed by filing a notice of withdrawal with the department of public

1 health and human services. The notice of withdrawal must include an affidavit attesting that a copy of the
2 notice was provided to any parent who signed the acknowledgment form.

3 (b) Without need for ratification by court or administrative proceedings, an acknowledgment of
4 paternity under subsection (1)(e) becomes, as a matter of law, an irrebuttable presumption of paternity on
5 the earlier of the date:

6 (i) the acknowledgment is not timely rescinded as provided in subsection (5)(a); or

7 (ii) a court or administrative judgment, decree, or order is entered that establishes paternity or a
8 support order, when that proceeding includes the signatory.

9 (c) An irrebuttable presumption of paternity under this subsection (5) has the same force and effect
10 as a district court judgment adjudicating paternity and may only be set aside for fraud, duress, or material
11 mistake of fact. The burden of proof is on the person seeking to set the presumption aside. Except for
12 good cause, legal responsibilities arising from the paternity acknowledgment may not be stayed pending
13 the outcome of an action to set aside the presumption."

14
15 **Section 82.** Section 40-6-111, MCA, is amended to read:

16 **"40-6-111. Pretrial proceedings.** (1) As soon as practicable after an action to declare the existence
17 or nonexistence of the father and child relationship has been brought, an informal hearing ~~shall~~ must be
18 held. The court may order that the hearing be held before a referee. The public ~~shall~~ must be barred from
19 the hearing. A record of the proceeding ~~shall~~ must be kept.

20 (2) Upon refusal of any witness, including a party, to testify under oath or produce evidence, the
21 court may order ~~him~~ the witness to testify under oath and produce evidence concerning all relevant facts.
22 If the refusal is upon the ground that ~~his~~ the testimony or evidence might tend to incriminate ~~him~~ the
23 witness, the court may grant ~~him~~ the witness immunity from all criminal liability on account of the
24 testimony or evidence ~~he~~ the witness is required to produce. An order granting immunity bars prosecution
25 of the witness for any offense shown in whole or in part by testimony or evidence ~~he~~ that the witness is
26 required to produce, except for perjury committed in ~~his~~ the testimony. The refusal of a witness who has
27 been granted immunity to obey an order to testify or produce evidence is a civil contempt of the court.

28 (3) Upon motion, a temporary support order may be issued at any time during a paternity action
29 when there is clear and convincing evidence of paternity in the form of blood test results or other evidence.
30 The temporary support order must be established according to the uniform child support guidelines adopted

1 under 40-5-209."

2
3 **Section 83.** Section 40-6-115, MCA, is amended to read:

4 **"40-6-115. Civil action.** (1) An action under this part is a civil action governed by the rules of civil
5 procedure. ~~The action must be heard by a judge sitting without a jury.~~ The mother of the child and the
6 alleged father are competent to testify and may be compelled to testify. Sections 40-6-111(2), 40-6-112,
7 and 40-6-113 apply to all actions brought under this part.

8 (2) Testimony relating to sexual access to the mother by an unidentified person at any time or by
9 an identified person at a time other than the probable time of conception of the child is inadmissible in
10 evidence, unless offered by the mother.

11 (3) In an action against an alleged father, evidence offered by the alleged father with respect to
12 a person who is not subject to the jurisdiction of the court concerning sexual intercourse with the mother
13 at or about the probable time of conception of the child is admissible in evidence only if the alleged father
14 has undergone and made available to the court blood tests, the results of which do not exclude the
15 possibility of the alleged father's paternity of the child. A person who is identified and is subject to the
16 jurisdiction of the court must be made a defendant in the action.

17 (4) If a blood test has been initially ordered under this part and a party objects to the blood test
18 results, the objection must be filed within 20 days after service of the blood test results. If an objection is
19 filed, and upon the alleged father's advance payment for additional testing, the court shall order an
20 additional blood test. If no objection is made, the test results are admissible as evidence of paternity
21 without the need for foundation testimony or other proof of authenticity or accuracy. This subsection does
22 not limit the right of a party to contest the identity of persons submitting to testing.

23 (5) If the alleged father fails to answer or to appear at a scheduled hearing or for a scheduled blood
24 test, the district court shall enter an order declaring the alleged father the legal father of the child. The
25 district court may not enter an order under this section if there is more than one alleged father unless the
26 default applies to only one of them and all others have been excluded by the results of blood testing.

27 (6) Bills for pregnancy, childbirth, and paternity blood testing are admissible as evidence without
28 third-party foundation testimony and are prima facie evidence of the amounts incurred."

29
30 **Section 84.** Section 40-6-116, MCA, is amended to read:

1 **"40-6-116. Judgment or order.** (1) The judgment or order of the court determining the existence
2 or nonexistence of the parent and child relationship is determinative for all purposes.

3 (2) If the judgment or order of the court is at variance with the child's birth certificate, the court
4 shall order that a substitute birth certificate be issued under 40-6-123.

5 (3) (a) The judgment or order may contain any other provision directed against the appropriate
6 party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the
7 child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the
8 best interest of the child.

9 (b) Except when the financial responsibility of a responsible parent is in the process of being
10 determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must
11 contain a provision concerning the duty of child support.

12 (c) The judgment or order may direct the father to pay the reasonable expenses of the mother's
13 pregnancy and confinement.

14 (4) (a) Support judgments or orders ordinarily must be for periodic payments, which may vary in
15 amount.

16 (b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be
17 ordered in lieu of periodic payments of support.

18 (c) The court may limit the father's liability for past support of the child to the proportion of the
19 expenses already incurred that the court considers just.

20 (5) In determining the amount to be paid by a parent for support of the child and the period during
21 which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant
22 facts, including:

23 (a) the needs of the child, including medical needs;

24 (b) the standard of living and circumstances of the parents;

25 (c) the relative financial means of the parents;

26 (d) the earning ability of the parents;

27 (e) the need and capacity of the child for education, including higher education;

28 (f) the age of the child;

29 (g) the financial resources and the earning ability of the child;

30 (h) the responsibility of the parents for the support of others;

- (i) the value of services contributed by the custodial parent;
- (j) the cost of day care for the child; and
- (k) any custody arrangement that is ordered or decided upon.

(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(d) Child support obligations established under this section are subject to the registration and processing provisions of [sections 1 through 41] 9].

(7) The judgment or order, whether temporary or final, concerning child support and each modification of a judgment or order for child support must include a medical support order as defined in 40-5-804.

(8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation made under 40-6-118 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part

3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period.

(c) If an obligor is excepted from paying support through income withholding, the support order must include as part of the order a requirement that whenever the case is receiving services under Title IV-D of the Social Security Act, support payments must be paid through the department of public health and human services as provided in [section 5].

~~(9) (a) For the purposes of income withholding as provided in subsection (8), whenever~~ If the district court establishes paternity or establishes or modifies a child support obligation, the judgment, decree, or order must include a provision requiring the ~~parent obligated to pay support to inform parties to promptly file with the court and, if the department of public health and human services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following to update, as necessary, information on:~~

(i) identity of the party;

~~(ii) social security number;~~

~~(iii)(II) residential and mailing addresses;~~

~~(iv)(III) telephone number;~~

~~(v)(IV) driver's license number;~~

~~(a)(vi)(V) the name, and address, and telephone number of the parent's current party's employer;~~

and

~~(b) whether the parent has access to health insurance through an employer or other group; and~~

~~(c) if insurance coverage is available, the health insurance policy information.~~

~~(viii)(VI) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the party's employer.~~

(b) The order must further direct that in any subsequent child support enforcement action, upon

sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or the department of public health and human services, if the department is providing services under Title IV-D of the Social Security Act, may consider the due process requirements for notice and service of process to be met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the court.

(10) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of public health and human services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

~~(11) The social security number of a person subject to a paternity determination under this part must be recorded in the records relating to the matter."~~

Section 85. Section 40-6-117, MCA, is amended to read:

"40-6-117. Enforcement of judgment or order. (1) If existence of the father and child relationship is declared or paternity or a duty of support has been acknowledged or adjudicated under this part or under prior law, the court may, except as provided in 40-6-116(8) and [section 5], order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(2) Full faith and credit must be given to a determination of paternity made by any other state, whether presumed by law, established through voluntary acknowledgment, or established by administrative or judicial processes.

(3) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

(4) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support obligation to be paid, without need for further order of the court, to:

(i) the legal custodian of the minor child;

(ii) ~~(A) any other~~ a person, organization, or agency ~~having legal~~ to which the legal custodian voluntarily or involuntarily relinquishes actual physical custody of the minor child ~~or collecting child support~~

1 ~~on behalf of the minor child under a legal assignment of rights; or~~

2 ~~(B) the court for the benefit of the minor child;~~

3 (iii) any other person, organization, or agency ~~designated as caretaker of the minor child by~~
4 ~~agreement of the legal custodian; or~~

5 ~~(iv) any assignee or other person, organization, or agency authorized to receive or collect child~~
6 ~~support entitled by law, assignment, or similar reason to receive or collect the child support obligation.~~

7 (b) If the department of public health and human services is providing services under Title IV-D of
8 the Social Security Act, payment of support must be made through the department for distribution to the
9 person, organization, or agency entitled to the payment.

10 ~~(b)(c)~~ A judgment, decree, or order that omits the provision required by subsection (4)(a) is subject
11 to the requirements of subsection (4)(a) without need for an amendment to the judgment, decree, or order
12 or for any further action by the court."

13
14 **Section 86.** Section 50-15-210, MCA, is amended to read:

15 **"50-15-210. Paternity acknowledgment.** (1) Upon the birth of a child to a mother unmarried at
16 the time of birth, the administrator or person in charge of a hospital or other institution in which the birth
17 occurs or the midwife who attends the birth shall:

18 (a) provide an opportunity for the child's mother and alleged father to complete an acknowledgment
19 of paternity pursuant to 40-6-105;

20 (b) provide written information, furnished by the department of public health and human services,
21 describing the rights and responsibilities of paternity, the benefits of having a child's paternity established,
22 and the child's right to receive support; and

23 (c) forward a copy of an acknowledgment signed by the mother and the father to the department.

24 (2) The hospital, institution, or midwife is entitled to reimbursement for reasonable costs of
25 obtaining an acknowledgment. The department of public health and human services shall establish the
26 amount of reasonable costs, not to exceed the amount for which federal financial participation is available,
27 and the procedures for claiming reimbursement.

28 (3) Hospitals, institutions, and midwives shall use forms prescribed by the department of public
29 health and human services for the acknowledgment of paternity.

30 (4) If the child is born in this state, the department of public health and human services shall file

1 an acknowledgment received under 40-6-105 or this section with the child's certificate of birth. If the child
2 was not born in this state or if an acknowledgment received under 40-6-105 or this section cannot be filed
3 with the child's certificate of birth, the department shall file the acknowledgment in an acknowledgment
4 registry created and maintained for that purpose."

5
6 **Section 87.** Section 50-15-223, MCA, is amended to read:

7 **"50-15-223. Certificates of birth following adoption, legitimation, or determination or**
8 **acknowledgment of paternity.** (1) The department shall establish a new certificate of birth for a person born
9 in this state when the department receives the following:

10 (a) a certificate of adoption, as provided in 50-15-311, a certificate of adoption prepared and filed
11 in accordance with the laws of another state or foreign country, or a certified copy of the decree of
12 adoption, together with the information necessary to identify the original certificate of birth and to establish
13 a new certificate of birth; or

14 (b) a request that a new certificate be established if the request shows that:

15 (i) a district court, court of appropriate jurisdiction in another state, or administrative agency in this
16 state or another state with appropriate jurisdiction has determined the paternity of the person and
17 information necessary to identify the original certificate of birth is provided; or

18 (ii) both parents have acknowledged the paternity of the person and request that the surname be
19 changed from that shown on the original certificate.

20 (2) The date of birth and the city and county of birth must be stated in the newly established
21 certificate of birth. The department shall substitute the new certificate of birth for the original certificate
22 of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court
23 determination of paternity, or paternity acknowledgment may not be subject to inspection, except upon
24 order of a district court, as provided by rule, or as otherwise provided by state law.

25 (3) Upon receipt of a report of an amended decree of adoption, the department shall amend the
26 certificate of birth as provided in rules adopted by the department.

27 (4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the
28 original certificate of birth issued before the adoption to its place in the files and the certificate of birth
29 issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection,
30 except upon order of a district court or as provided by rule adopted by the department.

(5) Upon written request of both parents and receipt of a sworn acknowledgment and other credible evidence of paternity signed by both parents of a child born outside of marriage, the department shall reflect the paternity on the child's certificate of birth if paternity is not already shown on the certificate of birth.

(6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth is to be established under this section and the date and place of birth have not been determined in the adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with the department, as provided in 50-15-204, before a new certificate of birth may be established. The new certificate of birth must be prepared on a form prescribed by the department.

(7) When a new certificate of birth is established by the department, the department may direct that all copies of the original certificate of birth in the custody of any other custodian of vital records in this state either be sealed from inspection or be forwarded to the department for sealing from inspection.

(8) (a) The department shall, upon request of the adopting parents, prepare and register a certificate of birth in this state for a person born in a foreign country who is not a citizen of the United States and who was adopted through a district court in this state.

(b) The certificate of birth must be established by the department upon receipt of a certificate of adoption, conforming to the requirements of 50-15-311, from the court that reflects entry of an order of adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or older.

(c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual country of birth. A statement must be included on the certificate indicating that it is not evidence of United States citizenship for the child for whom it is issued.

(d) After registration of the certificate of birth in the new name of the adopted person, the department shall seal and file the certificate of adoption, which is not subject to inspection, except upon order of the district court, as provided by rule, or as otherwise provided by state law.

(9) The department may promulgate rules necessary to implement this section."

~~Section 94. Section 50-15-403, MCA, is amended to read:~~

~~"50-15-403. Preparation and filing of death or fetal death certificate. (1) A person in charge of~~

~~disposition of a dead body or fetus that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death shall obtain personal data on the deceased, including the deceased's social security number, if any, or, in the case of a fetal death, on the parents that is required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate.~~

~~(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician or the coroner having jurisdiction for medical certification of the cause of death. The person in charge of disposition shall obtain the completed certification of the cause of death from the physician or coroner and shall, within the time that the department may by rule prescribe, file the death or fetal death certificate with the local registrar in the registration area where the death occurred."~~

Section 88. Section 53-2-613, MCA, is amended to read:

"53-2-613. Application for assistance -- assignment of support rights. (1) Applications for public assistance, including but not limited to aid to families with dependent children and medical assistance, must be made to the county department of public welfare in the county in which the person is residing. The application must be submitted, in the manner and form prescribed by the department of public health and human services, and must contain information required by the department of public health and human services.

(2) A person by signing an application for public assistance assigns to the state, to the department of public health and human services, and to the county welfare department all rights that the applicant may have to support and medical payments from any other person in the applicant's own behalf or in behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance;

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient;
and

(d) does not apply to support that accrued before the applicant received public assistance.

(4) If a person who is the legal custodian and child support obligee under a support order

1 relinquishes physical custody of a child to a caretaker relative without obtaining a modification of legal
2 custody and the caretaker relative is determined eligible for public assistance on behalf of the child, the
3 child support obligation is transferred by operation of law to the caretaker relative and may be assigned as
4 provided in subsection (2). The transfer and assignment terminate when the caretaker relative no longer
5 has physical custody of the child, except for any unpaid support still owing under the assignment at that
6 time.

7 {4}(5) Whenever a child support or spousal support obligation is assigned to the department of
8 public health and human services pursuant to this section, the following provisions apply:

9 (a) If the support obligation is based upon a judgment or decree or an order of a court of competent
10 jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse
11 public assistance money expended.

12 (b) A recipient or former recipient of public assistance may not commence or maintain an action
13 to recover or enforce a delinquent support obligation or make any agreements with any other person or
14 agency concerning the support obligation, except as provided in 40-5-202.

15 (c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay
16 over or release for the benefit of any recipient or former recipient of public assistance any amounts received
17 pursuant to a judgment or decree or an order of the court until the department's child support enforcement
18 division has filed a written notice that:

19 (i) the assignment of current support amounts has been terminated; and

20 (ii) all assigned support delinquencies, if any, are satisfied or released.

21 (d) A recipient or former recipient of public assistance may not take action to modify or make any
22 agreement to modify, settle, or release any past, present, or future support obligation unless the
23 department's child support enforcement division is given written notice under the provisions of 40-5-202.
24 Any modifications or agreements entered into without the participation of the department are void with
25 respect to the state, the department, and the county welfare department.

26 (e) A support obligation assigned under this section may not be terminated, invalidated, waived,
27 set aside, or considered uncollectible by the conduct, misconduct, or failure of a recipient or former
28 recipient of public assistance to take any action or to cease any action required under a decree, judgment,
29 support order, custody order, visitation order, restraining order, or other similar order."

Section 96. ~~Section 61-5-107, MCA, is amended to read:~~

~~"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each~~

~~application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form furnished by the department. A motorcycle endorsement is required for the operation of a quadricycle. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.~~

~~(2) Each application must state the full name, date of birth, sex, and residence address of the applicant, and if the application is for a commercial vehicle operator's license, social security number, must briefly describe the applicant, and must state whether:~~

~~(a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country;~~

~~(b) any commercial operator license has ever been suspended or revoked; or~~

~~(c) an application has ever been refused, and, if so, the date of and reason for suspension, revocation, or refusal.~~

~~(3) When application is received from an applicant previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction. The driving record may be transmitted manually or by electronic medium. When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance."~~

Section 89. Section 87-1-102, MCA, is amended to read:

"87-1-102. Penalties. (1) A person who purposely, knowingly, or negligently violates a provision of this title, any other state law pertaining to fish and game, or the orders or rules of the commission or department is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined an amount not less than \$50 or more than \$1,000 or imprisoned in the county jail for not more than 6 months, or both, unless a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of that person's

1 license and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for
2 recreational purposes for a period set by the court. If the court imposes forfeiture of the person's license
3 and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss
4 of privileges as imposed by the court. The person shall surrender all licenses, as ordered by the court, to
5 the department within 10 days.

6 (2) (a) A person convicted of unlawfully taking, killing, possessing, or transporting a bighorn sheep,
7 moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals shall
8 be fined an amount not less than \$500 or more than \$2,000 or imprisoned in the county jail for not more
9 than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit
10 any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to
11 hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture, unless the court
12 imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person
13 of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the
14 department within 10 days.

15 (b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope,
16 elk, or mountain lion or any part of these animals shall be fined an amount not less than \$300 or more than
17 \$1,000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon
18 conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued
19 by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction
20 or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the
21 department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing,
22 and trapping licenses to the department within 10 days.

23 (c) A person convicted of unlawfully attempting to trap or hunt a game animal shall be fined an
24 amount not less than \$200 or more than \$600 or imprisoned in the county jail for not more than 60 days,
25 or both.

26 (d) A person convicted of purposely, knowingly, or negligently taking, killing, trapping, possessing,
27 transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation
28 of any provision of this title shall be fined an amount not less than \$100 or more than \$1,000, imprisoned
29 in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture
30 of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap in this state for 24

1 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period, and
2 any pelts possessed unlawfully must be confiscated. For each conviction or forfeiture, the department shall
3 notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping
4 licenses to the department within 10 days.

5 (e) A person convicted of hunting, fishing, or trapping while that person's license is forfeited or
6 a privilege is denied shall be imprisoned in the county jail for not less than 5 days or more than 6 months.
7 In addition, that person may be fined an amount not less than \$500 or more than \$2,000.

8 (3) A person convicted or who has forfeited bond or bail under this section and whose license
9 privileges are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or
10 trapping license or permit during the period when license privileges have been forfeited. A person convicted
11 of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping
12 license during the period when license privileges have been forfeited shall be fined an amount not less than
13 \$500 or more than \$2,000, imprisoned in the county jail for not more than 60 days, or both.

14 (4) A person convicted or who has forfeited bond or bail under this section and who has been
15 ordered to pay restitution under the provisions of 87-1-111 may not apply for any special license under Title
16 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following
17 the date of conviction or restoration of license privileges, whichever is later. If the violation involved the
18 unlawful taking of a moose, a bighorn sheep, or a mountain goat, the person may not apply for a special
19 license or enter a drawing for a special license or permit for the same species of game animal that was
20 unlawfully taken for an additional period of 5 years following the ending date of the first 5-year period. A
21 person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or
22 unlawfully entering a drawing for a special license or permit shall be fined an amount not less than \$500
23 or more than \$2,000, imprisoned in the county jail for not more than 60 days, or both.

24 (5) Notwithstanding the provision of subsection (1), the penalties provided by this section are in
25 addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2.

26 (6) If an administrative authority suspends a license, permit, or privilege to obtain a license or
27 permit issued under this title, THE ADMINISTRATIVE AUTHORITY OR the department shall notify the
28 person of the suspension and the person shall surrender the license or permit to the department within 10
29 days."
30

1 **SECTION 90. SECTION 87-1-108, MCA, IS AMENDED TO READ:**

2 **"87-1-108. Suspension of privileges for failure to comply with citation or sentence.** (1) A person
3 who fails to comply with the terms of a court citation, the terms of an administrative suspension, or fails
4 to fulfill the obligations of any court-imposed sentence for a wildlife violation under this title, resulting in
5 the issuance of a warrant for ~~his~~ the person's arrest, shall surrender any current hunting, fishing, and
6 trapping licenses to the department, and ~~his~~ the person's privileges to hunt, fish, and trap and to hold a
7 valid license to hunt, fish, or trap are suspended until the terms of the court citation or sentence are
8 satisfied.

9 (2) A person who loses ~~his~~ the person's privileges under this section or through an administrative
10 process must be notified by the department or by the administrative authority in person or by mail. A
11 person who hunts, fishes, traps, purchases licenses, or refuses to surrender any current hunting, fishing,
12 or trapping license in violation of this section is guilty of a misdemeanor and subject to the penalties
13 prescribed in 87-1-102."

14
15 ~~**Section 99. Section 87-2-106, MCA, is amended to read:**~~

16 ~~**"87-2-106. Application for license -- penalties for violation -- forfeiture of privileges.**~~ (1) A license
17 ~~may be procured from the director, any warden, or any authorized agent of the director. The applicant shall~~
18 ~~state the applicant's name, social security number, age, occupation, address of permanent residence, and~~
19 ~~post office address, the applicant's qualifying length of time as a resident in the state of Montana, whether~~
20 ~~a citizen of the United States or an alien, and other facts, data, or descriptions as may be required by the~~
21 ~~department. An applicant for a resident license shall present a valid Montana driver's license, Montana~~
22 ~~driver's examiner's identification card, or other identification specified by the department to substantiate~~
23 ~~the required information. It is the applicant's burden to provide documentation establishing the applicant's~~
24 ~~identity and qualifications to purchase a license. It is unlawful and a misdemeanor for a license agent to sell~~
25 ~~a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the~~
26 ~~time of application for licensure. Except as provided in subsections (2) through (4), the statements made~~
27 ~~by the applicant must be subscribed to before the officer or agent issuing the license.~~

28 ~~(2) Except as provided in subsection (3), department employees or officers may issue licenses by~~
29 ~~mail. Statements on an application for a license to be issued by mail need not be subscribed to before the~~
30 ~~employee or officer.~~

~~(3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.~~

~~(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.~~

~~(5) A license is void unless subscribed to by the licensee and by an employee or officer of the department or by a license agent or an authorized representative of the license agent.~~

~~(6) It is unlawful to subscribe to any statement, on any application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this subsection is guilty of a misdemeanor.~~

~~(7) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to a false statement to obtain a resident license shall be:~~

~~(i) fined not less than the greater of \$100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than \$1,000;~~

~~(ii) imprisoned in the county jail for not more than 6 months; or~~

~~(iii) both fined and imprisoned.~~

~~(b) In addition to the penalties specified in subsection (7)(a), upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.~~

~~(8) It is unlawful and a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section."~~

Section 100. ~~Section 87-2-202, MCA, is amended to read:~~

~~"87-2-202. Application -- stamp attachment -- fee -- expiration. (1) A wildlife conservation license must be sold upon written application. The application must contain the applicant's name, social security number, age, occupation, place of residence, post office address, and the qualifying length of time as a resident in the state of Montana; state whether the applicant is a citizen of the United States or an alien; and be subscribed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, or other identification specified by the department to substantiate~~

~~the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license. It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.~~

~~(2) Hunting, fishing, or trapping licenses in the form of tags or stamps issued to a holder of a wildlife conservation license must be affixed to or recorded on the wildlife conservation license according to rules the department may prescribe.~~

~~(3) (a) Resident wildlife conservation licenses may be purchased for a fee of \$4.~~

~~(b) Nonresident wildlife conservation licenses may be purchased for a fee of \$5.~~

~~(4) Licenses issued are void after the last day of February next succeeding their issuance."~~

NEW SECTION. SECTION 91. REPORT TO LEGISLATURE. THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES SHALL REPORT TO THE REGULAR SESSION OF THE 56TH LEGISLATURE ON PROGRESS TOWARD RESOLVING CHILD SUPPORT ISSUES BETWEEN THE STATE, FEDERAL, AND TRIBAL GOVERNMENTS.

NEW SECTION. SECTION 92. INTERIM STUDY -- MEMBERS -- REPORT TO LEGISLATURE. (1) THERE IS A COMMITTEE ON CHILD SUPPORT AND CHILD SUPPORT ENFORCEMENT. THE DUTIES OF THE COMMITTEE INCLUDE:

(A) STUDYING THE CHILD SUPPORT SYSTEM, INCLUDING CHILD SUPPORT ISSUES BETWEEN THE STATE, FEDERAL, AND TRIBAL GOVERNMENTS;

(B) PRESENTING A PLAN TO PROVIDE FOR AS MANY VOLUNTARY PAYMENT OPTIONS AS POSSIBLE; AND

(C) PRESENTING A PLAN FOR A METHOD TO MINIMIZE THE IMPACT ON EMPLOYERS OF PERSONS FROM WHOM CHILD SUPPORT IS WITHHELD; AND

(D) STUDY THE POSSIBILITY OF PRIVATIZING CHILD SUPPORT COLLECTION.

(2) THE COMMITTEE CONSISTS OF 13 MEMBERS, APPOINTED AS FOLLOWS:

(A) TWO MEMBERS OF THE HOUSE OF REPRESENTATIVES, APPOINTED BY THE SPEAKER, EACH FROM A DIFFERENT POLITICAL PARTY;

1 (B) TWO MEMBERS OF THE SENATE, APPOINTED BY THE COMMITTEE ON COMMITTEES, EACH
2 FROM A DIFFERENT POLITICAL PARTY;

3 (C) ONE DISTRICT COURT JUDGE WITH EXPERIENCE IN BOTH LEGISLATIVE AND FAMILY COURT
4 MATTERS, APPOINTED BY THE CHIEF JUSTICE OF THE SUPREME COURT;

5 (D) ONE OWNER OF A SMALL- TO MEDIUM-SIZE BUSINESS, APPOINTED BY THE GOVERNOR;

6 (E) TWO PEOPLE WHO ARE CURRENTLY PAYING CHILD SUPPORT, APPOINTED BY THE
7 GOVERNOR;

8 (F) TWO PEOPLE WHO ARE CURRENTLY RECEIVING CHILD SUPPORT, APPOINTED BY THE
9 GOVERNOR;

10 (G) TWO PEOPLE WHO ARE CURRENTLY INVOLVED IN PRIVATELY COLLECTING CHILD SUPPORT
11 PAYMENTS, APPOINTED BY THE GOVERNOR; AND

12 (H) ONE PERSON, WHO IS A NONVOTING MEMBER, FROM THE CHILD SUPPORT ENFORCEMENT
13 DIVISION OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, APPOINTED BY THE
14 DIRECTOR OF THE DEPARTMENT.

15 (3) THE COMMITTEE SHALL ELECT A PRESIDING OFFICER FROM AMONG ITS MEMBERS AND
16 MAY ELECT OTHER OFFICERS.

17 (4)(A) THE LEGISLATORS APPOINTED TO THE COMMITTEE ARE ENTITLED TO COMPENSATION
18 AND REIMBURSEMENT OF EXPENSES AS PROVIDED IN 5-2-302.

19 (B) ALL OTHER MEMBERS ARE ENTITLED TO REIMBURSEMENT IN THE SAME MANNER AS
20 EMPLOYEES ARE REIMBURSED UNDER 2-18-501 THROUGH 2-18-503.

21 (5) THE COMMITTEE MAY RECEIVE STAFF SUPPORT FROM THE DEPARTMENT OF PUBLIC
22 HEALTH AND HUMAN SERVICES AND, TO THE EXTENT THAT STAFF ARE AVAILABLE, FROM THE
23 LEGISLATIVE SERVICES DIVISION AND LEGISLATIVE FISCAL DIVISION.

24 (6) THE COMMITTEE SHALL REPORT ITS FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS,
25 INCLUDING DRAFTS OF SUGGESTED LEGISLATION, IF ANY, TO THE 56TH LEGISLATURE.

26
27 NEW SECTION. SECTION 93. APPROPRIATION. THERE IS APPROPRIATED FROM THE GENERAL
28 FUND TO THE LEGISLATIVE SERVICES DIVISION \$25,000 FOR THE PURPOSE OF SUPPORTING THE
29 ACTIVITIES OF THE COMMITTEE ON CHILD SUPPORT AND CHILD SUPPORT ENFORCEMENT. THIS IS
30 A BIENNIAL APPROPRIATION.

1 **NEW SECTION. Section 94. Codification instruction.** (1) [Sections 1 through 44] 9] are intended
2 to be codified as an integral part of Title 40, chapter 5, and the provisions of Title 40, chapter 5, apply to
3 [sections 1 through 44] 9].

4 (2) [Section 42] 10] is intended to be codified as an integral part of Title 40, chapter 5, part 2, and
5 the provisions of Title 40, chapter 5, part 2, apply to [section 42] 10].

6 (3) [Section 43] 11] is intended to be codified as an integral part of Title 40, chapter 5, part 1, and
7 the provisions of Title 40, chapter 5, part 1, apply to [section 43] 11].

8 (4) [Section 44] 12] is intended to be codified as an integral part of Title 19, chapter 2, part 9, and
9 the provisions of Title 19, chapter 2, apply to [section 44] 12].

10 (5) [Section 45] 13] is intended to be codified as an integral part of Title 19, chapter 20, part 3,
11 and the provisions of Title 19, chapter 20, apply to [section 45] 13].

12
13 **NEW SECTION. SECTION 95. COORDINATION INSTRUCTION.** (1) IF HOUSE BILL NO. 168 IS
14 PASSED AND APPROVED AND IF IT INCLUDES THE WORDS "OR UPON A SHOWING THAT THE PARTY'S
15 CASE WAS SUBSTANTIALLY PREJUDICED BY THE LACK OF AN IN-PERSON HEARING" OR SIMILAR
16 LANGUAGE IN AMENDMENTS TO THE FOLLOWING MCA SECTIONS, THEN THAT LANGUAGE IS
17 STRICKEN FROM THOSE SECTIONS:

18 17-4-105(4)(C)

19 40-5-189(1)

20 40-5-226(2)

21 40-5-414(3)

22 40-5-703(2)

23 40-5-824(5).

24 (2) IF [THIS ACT] IS PASSED AND APPROVED AND RETAINS THE COMMITTEE ESTABLISHED
25 IN [SECTION 92] AND THE APPROPRIATION FOR THE COMMITTEE'S ACTIVITIES IN [SECTION 93], THE
26 GENERAL FUND APPROPRIATION IN HOUSE BILL NO. 2 TO THE CHILD SUPPORT ENFORCEMENT
27 DIVISION OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES IS REDUCED BY \$12,500
28 IN FISCAL YEAR 1998 AND BY \$12,500 IN FISCAL YEAR 1999.

29
30 **NEW SECTION. Section 96. Severability.** If a part of [this act] is invalid, all valid parts that are

severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 97. Two-thirds vote required. Because 40-5-206 limits governmental liability by including a provision that a public entity that discloses certain information is not liable for negligent disclosure, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage of that provision. If the required vote is not obtained, the bracketed phrase contained in 40-5-206 is void.

~~**NEW SECTION. Section 102. Retroactive applicability.** [Section 1(6)(b)] applies retroactively, within the meaning of 1-2-109, to orders issued after January 1, 1994.~~

NEW SECTION. Section 98. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective July 1, 1997.

(2) [Sections 1, 9, 40, and 43 11] are effective October 1, 1997.

(3) [Sections 2 through 8] are effective October 1, 1998.

NEW SECTION. SECTION 99. CONTINGENT TERMINATION. [THIS ACT] TERMINATES ON THE DATE OF THE SUSPENSION IF THE FEDERAL GOVERNMENT SUSPENDS FEDERAL PAYMENTS TO THIS STATE FOR THIS STATE'S CHILD SUPPORT ENFORCEMENT PROGRAM OR FOR ONE OR MORE OF THIS STATE'S WELFARE PROGRAMS BECAUSE OF THIS STATE'S FAILURE TO ENACT LAW AS REQUIRED BY THE FEDERAL PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996.

-END-

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 374

Call to Order: By DON HARGROVE, on April 18, 1997, at 12:25 p.m., in Room 413/415.

ROLL CALL

Members Present:

Sen. Don Hargrove (R)
Sen. Thomas F. Keating (R)
Sen. Mignon Waterman (D)
Rep. William E. Boharski (R)
Rep. Loren L. Soft (R)
Rep. Diane Sands (D)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council Division
Jodi Jones, Committee Secretary

HEARING ON SB 374

SENATOR DON HARGROVE said his goal it to get this to where it will be accepted on the federal level.

REP. LOREN SOFT said the House Judiciary Committee went through these amendments and page 12, sub-section 66 is the only new language that has been added (EXHIBIT 1).

Mary Ann Wellbank, Child Support Enforcement Division, discussed the amendments (EXHIBIT 1).

SENATOR TOM KEATING asked if current state language was being restored in the amendments. Amy Pfeifer, Department of Public Health and Human Services, said yes.

Mary Ann Wellbank continued to explain the amendments (EXHIBIT 1).

{Tape: 1; Side: A; Approx. Time Count: 12:39 a.m.; Comments: .}

REP. SOFT said in sub-committee he had asked for a sunset clause and he would like that put in there.

Mary Ann Wellbank said we wouldn't sunset the whole law just the contingency language.

REP. SOFT said this bill came to the whole committee, went to sub-committee and made all of these amendments including the sunset and that was adopted by the committee. The bill failed, and REP. BILL BOHARSKI made a substitute amendment to strip out the contingency language and the sunset also was stripped out.

Motion:

REP. SOFT MOVED TO ADOPT THE AMENDMENTS INCLUDING THE SUNSET CLAUSE.

Discussion:

SENATOR MIGNON WATERMAN wanted the amendments segregated.

Motion:

SENATOR KEATING MOVED TO SEGREGATE THE CONTINGENCY LANGUAGE.

Discussion:

SENATOR HARGROVE said if you segregate the contingency language and pass it by itself then it is no longer contingent.

REP. SOFT said a lot of the amendments are clarifying existing language and they have already been through the Judiciary Committee.

REP. BILL BOHARSKI said he would rather vote on these amendments one major area at a time.

Motion:

REP. BOHARSKI MOVED TO ACCEPT THOSE PARTS DEALING WITH FINANCIAL DATA MATCHING.

Discussion:

REP. SOFT said he would object segregating those four amendments because they need to be considered together and if one is gone then the whole bill is gone.

Vote:

MOTION TO ADOPT THOSE AMENDMENTS DEALING WITH FINANCIAL DATA MATCHING PASSED UNANIMOUSLY.

Motion:

SEN. WATERMAN MOVED THE AMENDMENTS DEALING WITH THE JUDGE WITHOUT A JURY.

REP. BOHARSKI said this is an area that is quite flexible. He thought one state went home already without adopting this provision (EXHIBIT 1).

REP. SOFT says this has happened so rarely in Montana and they can still request a trial.

SEN. WATERMAN said if Congress changed the rules on this it would still fall under the contingency language.

SEN. HARGROVE said he agreed that the language itself is somewhat offensive.

Mary Ann Wellbank said she didn't know how flexible they would be on this. The federal government says this shall be law even if it requires a constitutional change.

REP. BOHARSKI said these are issues of equity and civil issues where you are entitled to a jury trial. It might be better to leave this amendment out and ask the voters if they want a Constitutional change.

Vote:

MOTION TO ADOPT THOSE AMENDMENTS DEALING WITH A JUDGE WITHOUT A JURY PASSED 4-2 WITH SEN. KEATING AND REP. BOHARSKI voting no.

Motion:

SEN. WATERMAN MOVED TO ADOPT THE AMENDMENTS DEALING WITH NEW HIGHER REPORTING.

Discussion:

REP. SOFT said this has been a very controversial issue. They talked to other states and Washington D.C. trying to come up with a compromise.

Motion:

SEN. BOHARSKI MADE A SUBSTITUTE MOTION TO HAVE THE CHILD SUPPORT ENFORCEMENT DIVISION UPLOAD THE SAME DATA BASE ON A QUARTERLY BASIS.

Discussion:

REP. BOHARSKI said it should be up to bureaucrats to make sure this information is shared rather than being up to the employers.

SENATOR HARGROVE said we already report quarterly to the Department of Labor.

Mary Ann Wellbank said higher reporting is the heart of the bill. She said what REP. BOHARSKI is recommending is that we take the

existing data base where employers are required to report quarterly for purpose of unemployment and upload it to the federal level so other states could check on it. It doesn't comply with the new higher reporting. New higher need to be reported within 20 days because often times by the time it gets to the data base it is 90 to 100 days old and the obligor has found another job.

{Tape: 1; Side: A; Approx. Time Count: 12:58 p.m.; Comments: .}

SENATOR KEATING asked if the employer reports monthly to the Department of Labor. Amy Pfeifer said there is not a requirement to send the W-4's into anybody, there is just the unemployment that needs to be sent in quarterly.

SENATOR KEATING asked if the only time the employer notifies the state is on a quarterly report. Amy Pfeifer said that was correct.

REP. DIANE SANDS said this is unconstitutional once a data base is created at the federal level. It doesn't matter if they change the number of days for a reporting period, they are still out of compliance.

REP. BOHARSKI said he would withdraw his substitute motion.

Vote:

MOTION TO ADOPT THE AMENDMENTS DEALING WITH NEW HIGHER REPORTING PASSED 4-2 WITH SEN. KEATING AND REP. BOHARSKI voting no.

Motion/Vote:

REP. SANDS MOVED TO ADOPT SOCIAL SECURITY REPORTING. MOTION CARRIED 4-2 WITH SEN. KEATING AND REP. BOHARSKI voting no.

Motion/Vote:

SEN. WATERMAN MOVED TO ADOPT REMAINING AMENDMENTS EXCEPT FOR THE SUNSET CLAUSE AND SUB-SECTION 66. MOTION CARRIED 5-1 WITH REP. BOHARSKI voting no.

Motion:

REP. SOFT MOVED THE CONTINGENCY LANGUAGE IN SUB-SECTION 66.

Discussion:

Amy Pfeifer explained the contingency language (EXHIBIT 1).

REP. BOHARSKI asked about the amendment dealing with termination based on withholding of federal funds. Amy Pfeifer said this was explained on page 119 of the bill.

Vote:

MOTION TO ADOPT THE CONTINGENCY LANGUAGE PASSED UNANIMOUSLY.

Motion:

SENATOR KEATING MOVED TO ADOPT THE SUNSET CLAUSE.

Discussion:

SENATOR KEATING asked what the sunset clause would do. Mary Ann Wellbank said those acts under the sunset would have to be reconsidered next session because they are sunseted on June 30, 1999.

SENATOR WATERMAN said she is against this amendment. If Congress changes this, the amendments will be null and void anyway. And if Congress doesn't give us the money because we haven't complied with the law they are null and void and if another state challenges this they are void also. If all of those things fail, why subject the next legislature into doing that. It is expensive to seek waivers and how is that going to be staffed. Mary Ann Wellbank said we have never done this before, but they plan on having one person collect data and study this.

Vote:

MOTION TO ADOPT THE SUNSET CLAUSE CARRIED 5-1 WITH SEN. WATERMAN voting no.

Motion:

REP. BOHARSKI MOVED PAGE 119, SECTION 98, LINE 16 STRIKE 1997 AND INSERT 1999 AND LINE 17 STRIKE 1998 AND INSERT 2000.

Discussion:

REP. SOFT said he is against this motion. If we adopt and other states are going to question and push like we are and then it gets overturned it is done. All we can do is say that we tried.

SENATOR KEATING said if they delay this it is the same as not doing it.

Vote:

MOTION TO ADOPT THE DATE CHANGES FAILED 1-5 WITH REP. BOHARSKI VOTING YES.

Discussion:

REP. BOHARSKI asked if there is any provision in this act that says if Congress repeals this act, that they act immediately falls back. Mary Ann Wellbank said it is hard to say if any of

them will be repealed. It can be added to the amendments if needed.

John MacMaster said if federal law is repealed or amended out then that provision terminates. This is very difficult because they are talking about so many different things and the way they are interpreted. Being a department director would be very difficult because there would be so many provisions and they would have to decide if any had been revoked.

Mary Ann Wellbank said if it is real simple like taking out the new hirer reporting, then their job is simple. If they change the number of days from 20-40 then it can be very difficult to change this.

REP. BOHARSKI said language could be added that if the federal government repeals provisions requiring sections of this act, then those actions are terminated upon the action of the federal government.

John MacMaster said this can't be done because somebody has to decide if this section of the federal law has been repealed or not.

SENATOR KEATING asked if the word "categories" could be used. **Mary Ann Wellbank** said if they stick with the word "simple repealer" then it will be okay.

Motion/Vote:

REP. BOHARSKI MOVED THE CONCEPTUAL LANGUAGE TO INCLUDE A REPEALER. MOTION CARRIED UNANIMOUSLY.

MOTION/VOTE:

SEN. KEATING MOVED SB 374 DO PASS AS AMENDED. MOTION CARRIED 4-2 WITH SEN. KEATING AND REP. BOHARSKI voting no.

Amendments to Senate Bill No. 374
Reference Bill, As Amended, Copy

For the Free Conference Committee

Prepared by John MacMaster
April 17, 1997

1. Title, line 9:
Following: "~~HIRES,~~"
Insert: "AND A DIRECTORY OF NEW HIRES;"
2. Title, line 11.
Following: "~~NUMBERS,~~"
Insert: "AVAILABILITY OF SOCIAL SECURITY NUMBERS"
3. Page 1, lines 19 and 20.
Strike: "~~ESTABLISHING~~" on line 19 through "~~COMMITTEE;~~" on line 20
4. Title, line 21.
Following: "~~40-4-105,~~"
Insert: "37-1-307, 40-1-107, 40-4-105,"
5. Title, line 29.
Following: "~~50-15-403,~~"
Insert: "50-15-403,"
Following: "~~61-5-107,~~"
Insert: "61-5-107,"
6. Title, line 30.
Strike: "A"
7. Title, page 2, line 1.
Strike: "DATE"
Insert: "DATES"
8. Page 2, line 6.
Strike: "13"
Insert: "15"
9. Page 2, line 17.
Strike: "9"
Insert: "11"
10. Page 2, line 21.
Insert: "[(1) "Date of hire" means the first day that an employee starts work for which the employee is owed compensation by the payor of income.]"
Renumber: subsequent subsections

11. Page 3, line 3.

Insert: "[(3) (a) "Employee" means a person 18 years of age or older who performs labor in this state for an employer in this state for compensation and for whom the employer withholds federal or state tax liabilities from the employee's compensation.

(b) The term does not include an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting pursuant to [section 9] with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.]"

Renumber: subsequent subsections

12. Page 3, line 17.

Insert: "[(8) "Labor organization" means a labor union, union local, union affiliate, or union hiring hall.]"

Renumber: subsequent subsections

13. Page 3, line 30.

Insert: "[(12) "Rehire" means the first day, following a termination of employment, that an employee begins to again perform work or provide services for a payor. Termination of employment does not include temporary separations from employment, such as unpaid medical leave, an unpaid leave of absence, or a temporary or seasonal layoff.]"

Renumber: subsequent subsections

14. Page 5, line 15.

Insert: "[(8) An employer or labor organization shall report a newly hired or rehired employee. Information reported by an employer must be electronically compared to the information data base to align an obligor who owes a duty of support with a source of income. When a match is revealed in a IV-D case, a notice will, if appropriate to the case, be promptly transmitted to the employer directing the employer to commence withholding for the payment of the obligor's support obligation.]"

Renumber: subsequent subsections

15. Page 6, line 12 and line 19.

Strike: "13"

Insert: "15"

16. Page 6, line 29.

Following: "other"

Insert: "[social security number, other]"

17. Page 7, line 1.

Following: "if any."

Insert: "[social security number, if any,]"

18. Page 14, line 6.

Insert: "NEW SECTION. Section 9. Directory of new hires -- employer reporting requirements. (1) (a) An employer doing

business in the state shall report to the department the hiring or rehiring of an employee to whom the employer anticipates paying income.

(b) An employer shall report the hiring or rehiring of an employee by submitting a copy of the employee's completed W-4 form or, at the option of the employer, its informational equivalent or any other format agreed to by the department. The report must include the employee's name, date of hire, social security number, and residential and mailing addresses, and the name, address, and federal identification number of the employer. The report may include the employee's date of birth.

(c) If an employer provides health or medical insurance coverage for an employee and the coverage may be extended to the employee's children, the employer may, along with the date the employee becomes eligible for coverage, provide that information as part of the new hire report under subsection (1)(b).

(2) Transmission of the reports must be by first-class mail, electronic or magnetic transmission, including facsimile transmission, or any other format agreed to by the department. Written reports must be submitted within 20 days of the employee's date of hire or rehire. Reports transmitted electronically or magnetically may be made by two transmissions monthly, if necessary, not less than 12 or more than 16 days apart.

(3) An employer who has employees in two or more states and who transmits new hire reports electronically or magnetically may comply with this section by designating one of the states in which there is an employee and transmitting the report of new hires to that state. A multistate employer who elects to report to only one state shall give written notice of the state to which the employer will transmit new reports. As required by 42 U.S.C. 653a (b)(1)(B), this notice must be transmitted to the secretary of the federal department of health and human services.

(4) An employer providing reports is not liable to the employee for the disclosure or any subsequent use by the processing center of the information."

Renumber: subsequent sections

19. Page 14, line 10.

Following: "department"

Insert: "[and the employee W-4 forms or similar forms transmitted to the department]"

20. Page 17, line 8.

Insert: "NEW SECTION. Section 11. Automated access to financial records -- confidentiality -- no liability. (1) For the purposes of this section, unless the context otherwise indicates, the following definitions apply:

(a) "Account" means a savings, checking, deposit and withdrawal, demand deposit, money market, profit and loss, or time deposit account opened by a depositor in a financial institution.

(b) "Depositor" means a person, share account holder, sole proprietor, or joint owner of an account in a financial

institution in this state.

(c) "Financial institution" means:

(i) a depository institution, as defined in section 3(c) of the federal deposit insurance act, 12 U.S.C. 1813(C);

(ii) an institution-affiliated party, as defined in the federal deposit insurance act, 12 U.S.C. 1813(U);

(iii) any state credit union, as defined in 32-3-102, or federal credit union, as defined in section 101 of the federal credit union act, 12 U.S.C. 1752, including an institution-affiliated party of such a credit union, as defined in section 206(r) of the act, 12 U.S.C. 1786(R); and

(iv) any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in the state.

(d) "Obligor" means a person who owes a debt for child, spousal, or medical support as determined by the department or as specified by order of a tribunal of competent jurisdiction, the amount of which exceeds \$500 or a total of 3 months debt, whichever is less.

(2) (a) Upon written request from the department, a financial institution shall run a data match of the department's list of obligors with the financial institution's depositors and provide the information in a computer or other reasonable format accessible by the financial institution. The department may not request the information referred to in this subsection from a financial institution more than once in each calendar quarter.

(b) The information on an obligor found to be a depositor at a financial institution must include the obligor's full name, social security number or other taxpayer identification number, and account number. If normally kept by the financial institution, the information must also include the mailing address, employment address, and any other information that identifies the obligor

(c) The financial institution shall provide the requested information within 30 days of the request from the department.

(3) The department shall run a computer match of all obligors with the information from the financial institution required in subsection (2). If there is a match between an obligor and a depositor, the financial institution must, upon request of the department, provide additional information within 30 days, including, but not limited to:

(a) verification of the obligor's full name and social security number;

(b) the financial institution's account number;

(c) the nature of the account or accounts held by the obligor;

(d) the funds available in the account less any preexisting encumbrance held by the financial institution; and

(e) any taxes, penalties, interest, or other costs to be legally imposed on the account if the account is accessed prior to a maturity date.

(4) The amounts available in an obligor's account do not include amounts available pursuant to overdraft coverage offered by the financial institution.

(5) The financial institution shall honor a subsequent

appropriate lien from the department sent to the financial institution.

(6) (a) A financial institution receiving a data request, data match, or lien from the department may not provide notice to an obligor identified in the information submitted to the department. Failure to provide notice does not constitute a violation of the financial institution's duty of good faith to its customers.

(b) A notice given by a financial institution to an obligor identified by the department subjects the financial institution to the contempt authority of the department under 40-5-226.

(7) The department shall pay a financial institution a reasonable fee for providing the information required in subsection (2), not to exceed the actual documented costs incurred by the financial institution.

(8) Information requested by the department and provided by a financial institution under this section is confidential and may be used only for IV-D purposes. Use of information for any other purpose without the authorization of the department subjects the user to a civil penalty of not more than \$500 per name per use.

(9) A financial institution is not liable to a person for:

(a) a disclosure of information to the department under this section;

(b) encumbering or surrendering assets held by the financial institution in response to a notice of lien or levy issued by the department; or

(c) any other action under this section taken in good faith to comply with the requirements of this section as long as the action is reasonable."

Renumber: subsequent sections

21. Page 18, line 20.

Following: "funds"

Insert: "as directed in the income-withholding order"

22. Page 18, line 21.

Strike: "as directed in the income-withholding order"

23. Page 20, line 7.

Strike: "11"

Insert: "13"

24. Page 22, line 6.

Strike: "12]"

Insert: "14]"

25. Page 23, line 7.

Strike: "13"

Insert: "15"

26. Page 26, line 28.

Insert: "Section 22. Section 37-1-307, MCA, is amended to read:

"37-1-307. Board authority. (1) A board may:

(a) hold hearings as provided in this part;
(b) issue subpoenas and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint, issued by a majority vote of board members not serving on the screening panel described in subsection (1)(e), and signed by the presiding officer of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) compel attendance of witnesses and the production of documents. Subpoenas may be enforced as provided in 2-4-104.

(e) establish a screening panel that determines whether there is reasonable cause to believe that a licensee has violated a statute or rule justifying disciplinary proceedings. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(f) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding its licensees and license applicants.

(3) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board must keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act."

Section 23. Section 40-1-107, MCA, is amended to read:

"40-1-107. Form of application, license, marriage certificate, and consent. (1) The director of the department of public health and human services shall prescribe the form for an application for a marriage license, which must include the following information:

(a) name, sex, address, social security number, and date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, the party's name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of public health and

human services shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage."

(3) The license, certificate, or consent may not contain the social security number, and the department must keep the number from this source confidential, except that the department may use the number in administering Title IV-D of the Social Security Act.

Section 24. Section 40-4-105, MCA, is amended to read:

"40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses. (1) The verified petition in a proceeding for dissolution of marriage or legal separation ~~shall~~ must allege that the marriage is irretrievably broken and ~~shall~~ must set forth:

(a) the age, occupation, and residence of each party and ~~his~~ the party's length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding the commencement of this proceeding; or

(ii) there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service file a verified response. ~~No~~ A decree may not be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

(6) The social security number, if known, of a person subject to a decree of dissolution or a support order must be recorded in the records relating to the matter. The recordkeeper must keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act."

Renumber: subsequent sections

27. Page 28, line 2.

Strike: "9]"
Insert: "11]"

28. Page 29, line 5.
Following: line 4
Insert: "[social security number,]"

29. Page 47, line 20.
Insert: "[(d) social security number;]"
Renumber: subsequent subsections

30. Page 56, line 3.
Strike: "9]"
Insert: "11]"

31. Page 57, line 6.
Insert: "[(ii) social security number;]"
Renumber: subsequent subsections

32. Page 58, line 19.
Following: "~~or~~"
Insert: "[; or]"

33. Page 58, line 21.
Following: "~~department~~"
Insert: "[(h) a financial institution uses information provided
by the department pursuant to [section 11] for any other
purpose without the authorization of the department]"

34. Page 65, line 1.
Following: "~~jury.~~"
Insert: "[The matter must be heard by a judge sitting without a
jury.]"

35. Page 74, line 22 and line 24.
Page 84, line 16 and line 19
Strike: "RECEIPT"
Insert: "the date"

36. Page 74, line 26.
Following: "EXISTED."
Insert: "This notice is different from the notice required by 40-
5-305."

37. Page 75, line 2.
Following: "delinquent"
Insert: "who has determined that an obligor is delinquent"

38. Page 75, line 16.
Following: line 15
Insert: "required under 40-5-306"

39. Page 77, line 25.
Following: "place"
Insert: "or continue"

40. Page 78, line 3.
Following: "order"
Insert: "or may authorized issuance of an income deduction order"
41. Page 78, lines 7 and 8.
Strike: "THAT" on line 7 through "OR THAT" on line 8
42. Page 81, line 30 through line 2 of page 82
Strike: "A" on page 81, line 30 through "WITHHOLDING" on line 2 of page 82
43. Page 84, line 21.
Following: "EXISTED."
Insert: "This notice is different from the notice required by subsection (2) (b)."
44. Page 87, line 19.
Following: "withhold"
Insert: "or may issue an order to withhold income"
45. Page 87, lines 28 and 29.
Strike: "OR" on line 28 through "EXISTED" on line 29
46. Page 88, line 21.
Strike: "CONTINUE TO"
47. Page 89, line 30.
Insert: "[(b) social security number;]"
Renumber: subsequent subsections
48. Page 92, line 1.
Strike: "AND"
Insert: ", "
49. Page 92, line 2.
Following: "obligor"
Insert: ", and, if known, the social security number of the obligor"
50. Page 101, line 5.
Following: "jury."
Insert: "[The action must be heard by a judge sitting without a jury.]"
51. Page 103, line 23.
Strike: "9]"
Insert: "11]"
52. Page 104, line 19.
Insert: "[(ii) social security number;]"
Renumber: subsequent subsections
53. Page 105, line 13.
Insert: "[(11) The social security number of a person subject to a paternity determination under this part must be recorded

in the records relating to the matter. The recordkeeper must keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]"

54. Page 109, line 11.

Insert: "Section 92. Section 50-15-403, MCA, is amended to read:

"50-15-403. Preparation and filing of death or fetal death certificate. (1) A person in charge of disposition of a dead body or fetus that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death shall obtain personal data on the deceased, including the deceased's social security number, if any, or, in the case of a fetal death, on the parents that is required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate.

(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician or the coroner having jurisdiction for medical certification of the cause of death. The person in charge of disposition shall obtain the completed certification of the cause of death from the physician or coroner and shall, within the time that the department may by rule prescribe, file the death or fetal death certificate with the local registrar in the registration area where the death occurred.""

Renumber: subsequent sections

55. Page 110, line 30.

Insert: "Section 94. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form furnished by the department. A motorcycle endorsement is required for the operation of a quadricycle. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must state the full name, date of birth, sex, and residence address of the applicant, and if the application is for a commercial vehicle operator's license, social security number, must briefly describe the applicant, and must state whether:

(a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country;

(b) any commercial operator license has ever been suspended or revoked; or

(c) an application has ever been refused, and, if so, the

date of and reason for suspension, revocation, or refusal.

(3) The department must keep the applicant's social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.

~~(3)~~(4) When application is received from an applicant previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction. The driving record may be transmitted manually or by electronic medium. When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.""

Renumber: subsequent sections

56. Page 116, line 18 through line 30 of page 117

Strike: sections 92 and 93 in their entirety

Renumber: subsequent sections

57. Page 118, line 1 and line 3.

Strike: "9]"

Insert: "11]"

58. Page 118, line 4 and line 5.

Strike: "10]"

Insert: "12]"

59. Page 118, line 6 and line 7.

Strike: "11]"

Insert: "13]"

60. Page 118, line 8 and line 9.

Strike: "12]"

Insert: "14]"

61. Page 118, line 10 and line 11.

Strike: "13]"

Insert: "15]"

62. Page 119, line 16.

Following: "~~10~~,"

Insert: "10,"

Strike: "11"

Insert: "13"

63. Page 119, line 19.

Following: "TERMINATION"

Insert: "--request for federal exemptions"

Strike: "[THIS ACT]"

Insert: "(1) [Sections 9, 11, 22 through 24, 94, and 96, and the bracketed language in sections 1 through 3, 9, 20, 40, 45, and 83]"

64. Page 119, line 21.

Following: "PROGRAM"

Strike: "OR"

Insert: "and"

Strike: "ONE OR MORE OF"

65. Page 119, line 22.

Strike: "WELFARE PROGRAMS"

Insert: "program relating to temporary assistance to needy families"

66. Page 119, line 24.

Insert: "(2) [Sections 9, 11, 22 through 24, 94, and 96, and the bracketed language in sections 1 through 3, 9, 20, 40, 45, and 83] terminates on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996."

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted this state an exemption from one of the following provisions, the provision terminates on the date the exemption takes effect:

(a) [section 9];

(b) [section 11];

(c) [sections 22 through 24];

(d) [section 94];

(e) [section 96];

(f) [the bracketed provisions in sections 1 through 3, 9, 20, 40, 45, and 83].

(4) The department of public health and human services shall do everything reasonably within its power to obtain as soon as possible federal government exemptions from the provisions listed in subsection (3).

ROLL CALL

FREE CONFERENCE or CONFERENCE COMMITTEE

ON BILL NO. SB 374

DATE 4/18/97

NAME	PRESENT	ABSENT	EXCUSED
Sen Don Hargrove	X		
Sen Ric Holden Tom Keating	X		
Sen. Mignon Waterman	X		
Rep. Loren Soft	X		
Rep. Boharski	X		
Rep Diane Danda	X		

4/18/97
 DATE 4/17/97
 SENATE COMMITTEE ON Free Conference ~~SB 337~~
 BILLS BEING HEARD TODAY: SB 374

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
MARY Ann Welbank	CSED - DPHHS	374		
Amy Piferer				

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

LEGISLATIVE TAPE LOG

COMMITTEE:

SB 374 Free Conference

DATE:

4-18-97

MINUTES

CONTENT NOTES

12:25-12:39

Discussion of An

~~ADD~~ aad

12:39-12:58

Discussion

12:58-1:17

Discussion and adoption of
Free Conference Committee Report



FREE CONFERENCE COMMITTEE

on Senate Bill 374

Report No. 1, April 18, 1997

Page 1 of 15

Mr. President and Mr. Speaker:

We, your FREE Conference Committee on Senate Bill 374, met and considered Senate Bill 374 in its entirety.

We recommend that Senate Bill 374 (reference copy - salmon) be amended as follows:

1. Title, line 7.

Strike: "AND"

Insert: ", "

2. Title, line 9.

Following: "HIRES,"

Insert: ", AND A DIRECTORY OF NEW HIRES"

3. Title, line 11.

Following: "NUMBERS,"

Insert: "AVAILABILITY OF SOCIAL SECURITY NUMBERS,"

4. Title, lines 19 and 20.

Strike: "ESTABLISHING" on line 19 through "COMMITTEE;" on line 20

5. Title, line 21.

Following: "~~40-4-105,~~"

Insert: "37-1-307, 40-1-107, 40-4-105,"

6. Title, line 29.

Following: "~~50-15-403,~~"

Insert: "50-15-403,"

Following: "~~61-5-107,~~"

Insert: "61-5-107,"

7. Title, line 30.

Following: "DATES"

Strike: "AND"

Insert: ", "

Strike: "A"

ADOPT

REJECT

FCCR#1
SB 374

831400CC.STS

8. Title, page 2, line 1.

Strike: "DATE"

Insert: "DATES, AND A TERMINATION DATE"

9. Page 2, line 6.

Strike: "13"

Insert: "15"

10. Page 2, line 17.

Strike: "9"

Insert: "11"

11. Page 2.

Following: line 20

Insert: "[(1) "Date of hire" means the first day that an employee starts work for which the employee is owed compensation by the payor of income.]"

Renumber: subsequent subsections

12. Page 2.

Following: line 29

Insert: "[(3) (a) "Employee" means a person 18 years of age or older who performs labor in this state for an employer in this state for compensation and for whom the employer withholds federal or state tax liabilities from the employee's compensation.

(b) The term does not include an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting pursuant to [section 9] with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.]"

Renumber: subsequent subsections

13. Page 3.

Following: line 16

Insert: "[(8) "Labor organization" means a labor union, union local, union affiliate, or union hiring hall.]"

Renumber: subsequent subsections

14. Page 3.

Following: line 29

Insert: "[(12) "Rehire" means the first day, following a termination of employment, that an employee begins to again perform work or provide services for a payor. Termination of employment does not include temporary separations from employment, such as unpaid medical leave, an unpaid leave of absence, or a temporary or seasonal layoff.]"

Renumber: subsequent subsections

15. Page 5.

Following: line 14

Insert: "[(8) An employer or labor organization shall report a newly hired or rehired employee. Information reported by an employer must be electronically compared to the information data base to align an obligor who owes a duty of support with a source of income. When a match is revealed in a IV-D case, a notice will, if appropriate to the case, be promptly transmitted to the employer directing the employer to commence withholding for the payment of the obligor's support obligation.]"

Renumber: subsequent subsections

16. Page 6, line 12 and line 19.

Strike: "13"

Insert: "15"

17. Page 6, line 29.

Following: "~~ether~~"

Insert: "[social security number, other]"

18. Page 7, line 1.

Following: "~~if any,~~"

Insert: "[social security number, if any,]"

19. Page 14, line 6.

Insert: "NEW SECTION. **Section 9. Directory of new hires -- employer reporting requirements.** (1) (a) An employer doing business in the state shall report to the department the hiring or rehiring of an employee to whom the employer anticipates paying income.

(b) An employer shall report the hiring or rehiring of an employee by submitting a copy of the employee's completed W-4 form or, at the option of the employer, its informational equivalent or any other format agreed to by the department. The report must include the employee's name, date of hire, social security number, and residential and mailing addresses, and the name, address, and federal identification number of the employer. The report may include the employee's date of birth.

(c) If an employer provides health or medical insurance coverage for an employee and the coverage may be extended to the employee's children, the employer may, along with the date the employee becomes eligible for coverage, provide that information as part of the new hire report under subsection (1) (b).

(2) Transmission of the reports must be by first-class mail, electronic or magnetic transmission, including facsimile transmission, or any other format agreed to by the department. Written reports must be submitted within 20 days of the employee's date of hire or rehire. Reports transmitted electronically or magnetically may be made by two transmissions

monthly, if necessary, not less than 12 or more than 16 days apart.

(3) An employer who has employees in two or more states and who transmits new hire reports electronically or magnetically may comply with this section by designating one of the states in which there is an employee and transmitting the report of new hires to that state. A multistate employer who elects to report to only one state shall give written notice of the state to which the employer will transmit new reports. As required by 42 U.S.C. 653a(b)(1)(B), this notice must be transmitted to the secretary of the federal department of health and human services.

(4) An employer providing reports is not liable to the employee for the disclosure or any subsequent use by the processing center of the information."

Renumber: subsequent sections

20. Page 14, line 10.

Following: "department"

Insert: "[and the employee W-4 forms or similar forms transmitted to the department]"

21. Page 17, line 8.

Insert: "NEW SECTION. Section 11. Automated access to financial records -- confidentiality -- no liability -- definitions. (1) For the purposes of this section, unless the context otherwise indicates, the following definitions apply:

(a) "Account" means a savings, checking, deposit and withdrawal, demand deposit, money market, profit and loss, or time deposit account opened by a depositor in a financial institution.

(b) "Depositor" means a person, share account holder, sole proprietor, or joint owner of an account in a financial institution in this state.

(c) "Financial institution" means:

(i) a depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c);

(ii) an institution-affiliated party, as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(u);

(iii) any state credit union, as defined in 32-3-102, or federal credit union, as defined in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752, including an institution-affiliated party of such a credit union, as defined in section 206(r) of the act, 12 U.S.C. 1786(r); and

(iv) any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in the state.

(d) "Obligor" means a person who owes a debt for child, spousal, or medical support as determined by the department or as specified by order of a tribunal of competent jurisdiction, the

amount of which exceeds \$500 or a total of 3 months debt, whichever is less.

(2) (a) Upon written request from the department, a financial institution shall run a data match of the department's list of obligors with the financial institution's depositors and provide the information in a computer or other reasonable format accessible by the financial institution. The department may not request the information referred to in this subsection from a financial institution more than once in each calendar quarter.

(b) The information on an obligor found to be a depositor at a financial institution must include the obligor's full name, social security number or other taxpayer identification number, and account number. If normally kept by the financial institution, the information must also include the mailing address, employment address, and any other information that identifies the obligor.

(c) The financial institution shall provide the requested information within 30 days of the request from the department.

(3) The department shall run a computer match of all obligors with the information from the financial institution required in subsection (2). If there is a match between an obligor and a depositor, the financial institution shall, upon request of the department, provide additional information within 30 days, including but not limited to:

(a) verification of the obligor's full name and social security number;

(b) the financial institution's account number;

(c) the nature of the account or accounts held by the obligor;

(d) the funds available in the account less any preexisting encumbrance held by the financial institution; and

(e) any taxes, penalties, interest, or other costs to be legally imposed on the account if the account is accessed prior to a maturity date.

(4) The amounts available in an obligor's account do not include amounts available pursuant to overdraft coverage offered by the financial institution.

(5) The financial institution shall honor a subsequent appropriate lien from the department sent to the financial institution.

(6) (a) A financial institution receiving a data request, data match, or lien from the department may not provide notice to an obligor identified in the information submitted to the department. Failure to provide notice does not constitute a violation of the financial institution's duty of good faith to its customers.

(b) A notice given by a financial institution to an obligor identified by the department subjects the financial institution to the contempt authority of the department under 40-5-226.

(7) The department shall pay a financial institution a reasonable fee for providing the information required in subsection (2), not to exceed the actual documented costs incurred by the financial institution.

(8) Information requested by the department and provided by a financial institution under this section is confidential and may be used only for IV-D purposes. Use of information for any other purpose without the authorization of the department subjects the user to a civil penalty of not more than \$500 per name per use.

(9) A financial institution is not liable to a person for:

(a) a disclosure of information to the department under this section;

(b) encumbering or surrendering assets held by the financial institution in response to a notice of lien or levy issued by the department; or

(c) any other action under this section taken in good faith to comply with the requirements of this section as long as the action is reasonable."

Renumber: subsequent sections

22. Page 18, line 20.

Following: "funds"

Insert: "as directed in the income-withholding order"

23. Page 18, line 21.

Strike: "as directed in the income-withholding order"

24. Page 20, line 7.

Strike: "11"

Insert: "13"

25. Page 22, line 6.

Strike: "12"

Insert: "14"

26. Page 23, line 7.

Strike: "13"

Insert: "15"

27. Page 26, line 28.

Insert: "**Section 22.** Section 37-1-307, MCA, is amended to read: "**37-1-307. Board authority.** (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint, issued by a majority vote of board members not serving on the screening panel

described in subsection (1)(e), and signed by the presiding officer of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) compel attendance of witnesses and the production of documents. Subpoenas may be enforced as provided in 2-4-104.

(e) establish a screening panel that determines whether there is reasonable cause to believe that a licensee has violated a statute or rule justifying disciplinary proceedings. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(f) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding its licensees and license applicants.

(3) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act."

Section 23. Section 40-1-107, MCA, is amended to read:

"40-1-107. Form of application, license, marriage certificate, and consent. (1) The director of the department of public health and human services shall prescribe the form for an application for a marriage license, which must include the following information:

(a) name, sex, address, social security number, and date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, the party's name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of public health and human services shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage."

(3) The license, certificate, or consent may not contain the social security number, and the department shall keep the number from this source confidential, except that the department may use the number in administering Title IV-D of the Social Security Act.

Section 24. Section 40-4-105, MCA, is amended to read:

"40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses. (1) The verified petition in a proceeding for dissolution of marriage or legal separation ~~shall~~ must allege that the marriage is irretrievably broken and ~~shall~~ must set forth:

(a) the age, occupation, and residence of each party and ~~his~~ the party's length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding the commencement of this proceeding; or

(ii) there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service file a verified response. ~~No~~ A decree may not be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

(6) The social security number, if known, of a person subject to a decree of dissolution or a support order must be recorded in the records relating to the matter. The recordkeeper shall keep the social security number from this source

confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act."

Renumber: subsequent sections

28. Page 28, line 2.

Strike: "9"

Insert: "11"

29. Page 29, line 4.

Following: "number,"

Insert: "[social security number,]"

30. Page 47.

Following: line 19

Insert: "(d) social security number;"

Renumber: subsequent subsections

31. Page 56, line 3.

Strike: "9"

Insert: "11"

32. Page 57.

Following: line 5

Insert: "[(ii) social security number;]"

Renumber: subsequent subsections

33. Page 58, line 19.

Following: "or"

Insert: "[; or]"

34. Page 58, line 21.

Following: "department"

Insert: "[(h) a financial institution uses information provided by the department pursuant to [section 11] for any other purpose without the authorization of the department]"

35. Page 65, line 1.

Following: "jury,"

Insert: "[The matter must be heard by a judge sitting without a jury.]"

36. Page 74, line 22 and line 24.

Strike: "RECEIPT"

Insert: "the date"

37. Page 74, line 26.

Following: "EXISTED."

Insert: "This notice is different from the notice required by 40-5-305."

38. Page 75, line 2.

Following: "delinquent"

Insert: "who has determined that an obligor is delinquent"

39. Page 77, line 16.

Following: line 15

Insert: "required under 40-5-305"

40. Page 77, line 25.

Following: "place"

Insert: "or continue"

41. Page 78, line 3.

Strike: "or"

Insert: ", "

Following: "order"

Insert: ", or may authorize issuance of an income deduction order"

42. Page 78, lines 7 and 8.

Strike: "THAT" on line 7 through "OR THAT" on line 8

43. Page 81, line 30 through line 2 of page 82

Strike: "A" on page 81, line 30 through "WITHHOLDING" on line 2 of page 82

Insert: "a delinquency occurs"

44. Page 84, lines 16 and 19.

Strike: "RECEIPT"

Insert: "the date"

45. Page 84, line 21.

Following: "EXISTED."

Insert: "This notice is different from the notice required by subsection (2)(b)."

46. Page 87, line 19.

Strike: "or"

Insert: ", "

Following: "withhold"

Insert: ", or may issue an order to withhold income"

47. Page 87, lines 28 and 29.

Strike: "OR" on line 28 through "EXISTED" on line 29

48. Page 88, line 21.

Strike: "CONTINUE TO"

49. Page 89.
Following: line 29
Insert: "(b) social security number;"
Renumber: subsequent subsections

50. Page 92, line 1.
Strike: "AND"
Insert: ", "

51. Page 92, line 2.
Following: "~~obligor~~"
Insert: ", and, if known, the social security number of the obligor"

52. Page 101, line 5.
Following: "jury."
Insert: "[The action must be heard by a judge sitting without a jury.]"

53. Page 103, line 23.
Strike: "9"
Insert: "11"

54. Page 104.
Following: line 18
Insert: "[(ii) social security number;]"
Renumber: subsequent subsections

55. Page 105, line 13.
Insert: "[(11) The social security number of a person subject to a paternity determination under this part must be recorded in the records relating to the matter. The recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]"

56. Page 109, line 11.
Insert: "**Section 92.** Section 50-15-403, MCA, is amended to read:
"50-15-403. Preparation and filing of death or fetal death certificate. (1) A person in charge of disposition of a dead body or fetus that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death shall obtain personal data on the deceased, including the deceased's social security number, if any, or, in the case of a fetal death, on the parents that is required by the department from persons best qualified to supply the data and enter it on

the death or fetal death certificate.

(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician or the coroner having jurisdiction for medical certification of the cause of death. The person in charge of disposition shall obtain the completed certification of the cause of death from the physician or coroner and shall, within the time that the department may by rule prescribe, file the death or fetal death certificate with the local registrar in the registration area where the death occurred.""

Renumber: subsequent sections

57. Page 110, line 30.

Insert: "Section 94. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form furnished by the department. A motorcycle endorsement is required for the operation of a quadricycle. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must state the full name, date of birth, sex, and residence address of the applicant, and if the application is for a commercial vehicle operator's license, social security number, must briefly describe the applicant, and must state whether:

(a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country;

(b) any commercial operator license has ever been suspended or revoked; or

(c) an application has ever been refused, and, if so, the date of and reason for suspension, revocation, or refusal.

(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.

~~(3)~~ (4) When application is received from an applicant previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction. The driving record may be transmitted manually or by electronic medium. When received, the

driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.""

Renumber: subsequent sections

58. Page 116, line 18 through line 30 of page 117

Strike: sections 92 and 93 in their entirety

Renumber: subsequent sections

59. Page 118, line 1 and line 3.

Strike: "9"

Insert: "11"

60. Page 118, line 4 and line 5.

Strike: "10"

Insert: "12"

61. Page 118, line 6 and line 7.

Strike: "11"

Insert: "13"

62. Page 118, line 8 and line 9.

Strike: "12"

Insert: "14"

63. Page 118, line 10 and line 11.

Strike: "13"

Insert: "15"

64. Page 119, line 16.

Following: "~~10,~~"

Insert: "10,"

Strike: "11"

Insert: "13"

65. Page 119, line 19.

Following: "TERMINATION"

Insert: "-- request for federal exemptions"

Strike: "[THIS ACT] TERMINATES"

Insert: "(1) [Sections 9, 11, 22 through 24, 93, and 95] and the bracketed language in [sections 1 through 3, 9, 20, 40, 45, 88, and 89] terminate"

66. Page 119, line 21.

Following: "PROGRAM"

Strike: "OR"

Insert: "and"

Strike: "ONE OR MORE OF"

67. Page 119, line 22.

Strike: "WELFARE PROGRAMS"

Insert: "program relating to temporary assistance to needy families"

68. Page 119, line 24.

Insert: "(2) [Sections 9, 11, 22 through 24, 93, and 95] and the bracketed language in [sections 1 through 3, 10, 25, 45, 50, 88, and 89] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

- (a) [section 9];
- (b) [section 11];
- (c) [sections 22 through 24];
- (d) [section 93];
- (e) [section 95];
- (f) [the bracketed provisions in sections 1 through 3, 10, 25, 45, 50, 88, and 89].

(4) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted this state an exemption from one of the following provisions, the provision terminates on the date the exemption takes effect:

- (a) [section 9];
- (b) [section 11];
- (c) [sections 22 through 24];
- (d) [section 93];
- (e) [section 95];
- (f) [the bracketed provisions in sections 1 through 3, 10, 25, 45, 50, 88, and 89].

(5) The department of public health and human services shall do everything reasonably within its power to obtain, as soon as possible, federal government exemptions from the provisions listed in subsection (4).

(6) [Sections 9, 11, 22 through 24, 93, and 95] and the bracketed language in [sections 1 through 3, 10, 25, 45, 50, 88, and 89] terminate July 1, 1999.

(7) If the bracketed language in [section 1 through 3, 10, 25, 45, 50, 88, and 89] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement."

And that this FREE Conference Committee report be adopted.

For the Senate:

Don Hargrove
Senator Don Hargrove, Chair

Mignon Waterman
Senator Mignon Waterman

Senator Tom Keating

TS
Amd. Coord.

SR
Sec. of Senate

For the House:

Loren Soft
Rep. Loren Soft, Chair

Diane Sands
Rep. Diane Sands

Rep. Bill Boharski

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 374

Call to Order: By **CHAIRMAN DON HARGROVE**, on April 21, 1997, at 4:10 p.m., in Room 331.

ROLL CALL

Members Present:

Sen. Don Hargrove (R)
Sen. Daryl Toews (R)
Sen. Mignon Waterman (D)
Rep. William E. Boharski (R)
Rep. Daniel W. McGee (R)
Rep. Diana E. Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: Greg Petesch, Legislative Services Division
Jodi Jones, Committee Secretary

HEARING ON SB 374

SENATOR DON HARGROVE discussed the amendments (**EXHIBIT 1**).

REP. DAN MCGEE said he would like to recognize that Congressman Rick Hill is here and this shows how important this bill is.

Greg Petesch, Legislative Services Division, discussed the amendments (**EXHIBIT 1**).

SENATOR HARGROVE asked what new section A was for? **Greg Petesch** said it is to show that the federal government is in good faith. It also will give the employment notice of the new hirer information. It puts the burden on the dead-beat dad to give that notice rather than the employer.

SENATOR HARGROVE asked who gives out the notice that these people are delinquent now? **Mary Ann Wellbank, Department of Public Health and Human Services**, said if the obligated parent is delinquent in their system then they notify him of this. She said in the court system, usually nobody is monitoring this.

Greg Petesch said these amendments would be included in the prior Free Conference Committee report and he discussed this Conference Committee report (**EXHIBIT 2**).

SENATOR MIGNON WATERMAN asked if the idea of the new section A was to replace new hirer and the obligor who is delinquent would notify the department. **SENATOR HARGROVE** said that was correct.

SENATOR WATERMAN said she doesn't know of many delinquent obligers who will notify somebody and is this going to be a problem. **Mary Ann Wellbank** said it is already a problem because obligers don't step forward to say they are delinquent. The other problem is the county attorney won't prosecute because they have better things to do than this.

SENATOR HARGROVE asked if they can prosecute right now. **Mary Ann Wellbank** said they can but they don't.

REP. BILL BOHARSKI discussed the amendments (**EXHIBIT 1**). He used the example of getting a job at ABC construction and the worker was delinquent and then the worker goes to a new job and he has to notify the department that he is working for a new employer.

SENATOR HARGROVE said right now the department informs the obligor that he is delinquent and is the intent of this amendment to make him a misdemeanor criminal? **REP. BOHARSKI** said if the obligor doesn't notify the department and they can't find him, then the misdemeanor is not informing the department of where the obligor is working.

Discussion on Whereas #1:

REP. BOHARSKI said on the first whereas, he would insert after "395" the words "sub-section (c)".

REP. DIANA WYATT asked if the first paragraph of the amendments are Constitutional Amendments (**EXHIBIT 1**). **Greg Petesch** said the first whereas is a statement of fact of what PRWORA does.

Discussion on Whereas #2:

SENATOR WATERMAN asked if there are other situations in Montana where they require other new hires to notify someone. **Greg Petesch** said withholding is done on certain tax provisions upon being hired.

SENATOR HARGROVE said this is an issue of privacy and are we talking about the new hirer reporting specifically in the whereas statement #2. **REP. BOHARSKI** said he would suggest the social security requirements be included in this section also.

SENATOR HARGROVE asked in order to address social security numbers and new higher reporting, how would the wording be addressed. **Greg Petesch** said if the legislature chose to amend the Constitution then it would be limited as closely as possible to the requirements. We don't want to invade the right of privacy anymore than we are required to.

SENATOR WATERMAN asked if the new hirer reporting requirement or the social security requirement violates Article 2, Section 10, of the Constitution. And do we need to amend the Constitution to enact this legislation? **Greg Petesch** said he did not think the new hirer requirement would require a Constitutional Amendment. The social security issue is different, but he still didn't think it would require a Constitutional Amendment.

REP. BOHARSKI said one concern he has is the difference between this bill and the Attorney General's opinion is that private employees are working for the state. Where the parallel falls apart is that John Q. public as a private citizen of this state does not have to be associated with any programs being run by the state. He said he has a choice as a private contractor not to share his information with the state if he doesn't take that contract. If he works for someone else then he has to register his number in the federal system.

Discussion on Whereas #3:

SENATOR WATERMAN asked if there are other instances where people don't have a right to trial by jury. **Greg Petesch** said our Constitution is very broad in jury trials. There are instances where we restrict a jury trial, but we don't prohibit them.

SENATOR WATERMAN asked if we allow them for abuse and neglect cases. **Greg Petesch** said he thought there was a restriction and those are considered confidential in nature. **Amy Pfeifer, Department of Public Health and Human Services**, said abuse cases are usually confidential and there is a statutory limit on the right to jury trials in those actions.

Discussion on New Section A:

REP. BOHARSKI discussed new section A of the amendments (**EXHIBIT 1**).

Mary Ann Wellbank said one of the other new provisions of the bill requires the central registry of all support orders in Montana to have the parties promptly file with the courts and to update as necessary. This is stated on page 29 of the bill, lines 3-5.

REP. MCGEE said in sub-section (3), the wording is not right. It should read "an obligor is notified of a delinquency in the payment of support, the obligor shall notify the child support division within 10 days". The idea being that if an obligor is delinquent that they be notified and the imposition should be on the obligor and not the employer.

{Tape: 1; Side: A; Approx. Time Count: 4:39 p.m.; Comments: .}

SENATOR HARGROVE said we have five amendments: one is strip out the new hirer, strip out jury trial, strip out social security numbers, the whereas', and the new section A.

CONGRESSMAN RICK HILL said whatever the legislature does here, they will try to do their part on the federal level also. This wasn't a mistake by Congress as they wanted to establish a national mechanism for child support enforcement and setting up the national registry was one mechanism that would work. The idea that Congress will go back and change this is an unrealistic expectation at least in the short term. He said one area that needs to be accomplished is to give the Child Support Enforcement Division access to databases that are currently on file on the federal level. Social Security numbers are already on file because these numbers come from the federal government to begin with. The timing of reporting this information is important on the part of the employer and employee. He said much of this information already exists that is being required in this bill. This is not an easy legislative solution because Congress was confused when they passed it. They believe that they can dramatically improve child enforcement and it is an essential part of welfare reform and restoring individual responsibility. The big part of the problem is people are escaping the child support responsibilities because they are moving from job to job and state to state.

SENATOR WATERMAN said we have discussed numerous times that there are several provisions in this bill that we didn't like. We have language in the last Conference Committee that says if a federal court finds any of these provisions invalid that they will no longer be enforced. If any of these sections are repealed then none of those sections apply. If the federal government granted us a waiver and we require the department to seek waivers then these provision no longer apply and all of them have been sunseted. She said she didn't know what was accomplished by having these amendments. Sub-section A gives dead beat dads a chance to challenge this in court.

REP. MCGEE said there are about 44,000 cases that the department is working on in the state. There are approximately 20,000 individuals that are paying child support. There are 39,000 employers in the state of Montana and over 26,000 employers that have fewer than four employees. His concern is for those people because they are being asked to do this work. He said his objection to this bill is that the entire obligation falls on the payor not on the obligor. If the payor screws up, then they are blamed rather than the obligor. He said the whereas' are very important statements that send a message back to the federal government and the people who are reviewing this plan. He said we can pass this out of the House with the whereas', make the obligor responsible, strip out the new hirer registry, trial by jury, and the social security requirements.

SENATOR WATERMAN said she sits on the State Chamber Board and they did not object to this bill nor did the business people because they understand the obligation they are assuming and they understand what it is doing to taxes in this state. She did not think we need the 'whereas' because then it is a Constitutional issue.

SENATOR DARYL TOEWS said we are creating another underground economy if we put the 'whereas' in.

REP. WYATT said she has some problems with the 'whereas' because if you take away the privacy, some of the people that voted for this bill will not support it now. She asked if this language would require a Constitutional Amendment and if so what kind of vote are we asking for? She said in the new section you are asking dead-beat dads who are already not responsible and not ethical about their children to begin being ethical and responsible and report themselves. **Greg Petesch** said this is not asking for a Constitutional Amendment, however it is placing some obligation on the next legislature to propose some Constitutional Amendments based on this legislation.

{Tape: 1; Side: B; Approx. Time Count: 4:57 p.m.; Comments: .}

REP. BOHARSKI said we are willing to sit up here and vote to give people's names, address, phone numbers etc. all into a new database at the federal level accessible by anybody. He said he takes very seriously the privacy part of the Constitution. He said if we put an amendment on the Constitution concerning privacy you can guarantee it will be voted down. He said it is more efficient to catch criminals if they required everyone who owned a gun to register it and enter it into a national database, but nobody is going to vote for that.

SENATOR HARGROVE said social security numbers are being used everyday. He said almost all of the things that are being suggested in this bill are already done. Children and single parents are very important. If anything happens on the federal level or we get waivers, these laws will be repealed. The 'whereas' are important, but when they are dependant on stripping out other things, then they will crash the program. Congressman Hill said this is a substantial gamble if we want to hang our hat on section 395.

Motion:

REP. MCGEE MOVED TO ADOPT THE 3 WHEREAS'.

Discussion:

REP. MCGEE said on the first 'whereas', "sub-section (c)" should be inserted after "section 395." The second 'whereas', insert "and social security number" after the word "hire."

Vote:

MOTION TO ADOPT THE THREE WHEREAS' PASSED 4-2 WITH SENATOR WATERMAN AND REP. WYATT voting no.

Motion:

REP. MCGEE MOVED TO ADOPT NEW SECTION A WITH THE LANGUAGE BEING FURTHER REFINED IN SUB-SECTION 3. MOTION CARRIED 4-2 WITH SENATOR WATERMAN AND REP. WYATT voting no.

{Tape: 1; Side: B; Approx. Time Count: 5:09 p.m.; Comments: The committee took a 10 minute break for Senate floor action. Tape is garbled for a short period after the break.}

Motion/Vote:

REP. BOHARSKI MOVED TO STRIP HIGHER REPORTING. MOTION FAILED 3-3 WITH SENATOR HARGROVE, SENATOR WATERMAN AND REP. WYATT voting no.

Discussion:

SENATOR WATERMAN wanted to know what happened to the First Free Conference Committee and if it is included or are they back to the bill as it came out of the House. **Greg Petesch** said they are back to the bill as it came out of the House.

Motion/Vote:

REP. MCGEE MOVED TO STRIP OUT THE JURY TRIAL PORTION OF THE AMENDMENTS. MOTION FAILED 4-2 WITH SENATOR HARGROVE AND SENATOR WATERMAN voting no.

Motion/Vote:

REP. BOHARSKI MOVED TO STRIP OUT THE SOCIAL SECURITY REQUIREMENTS. MOTION FAILED 3-3 WITH SENATOR HARGROVE, SENATOR WATERMAN AND REP. WYATT voting no.

Motion:

SENATOR WATERMAN MOVED TO ADOPT ALL OF THE OTHER PROVISIONS NOT DEALING WITH SOCIAL SECURITY, NEW HIRER REPORTING AND JURY TRIAL.

Discussion:

SENATOR WATERMAN asked if they adopt the last Conference Committee report into this Conference Committee the only thing that will have to be added is the two amendments this committee agreed upon. **Greg Petesch** said that was correct.

SENATOR WATERMAN said if they cannot reach a positive agreement, there is no reason to send it back to the floor. **Greg Petesch**

said the first conference report is done and if they adopt the other two amendments then there is some additional work.

REP. BOHARSKI said we have adopted three whereas clauses but we have not voted to take those other provisions out of the bill and this accomplishes nothing.

Vote:

MOTION TO ADOPT ALL OF THE OTHER PROVISIONS NOT DEALING WITH SOCIAL SECURITY, NEW HIRER REPORTING AND JURY TRIAL FAILED 4-2 WITH REP. BOHARSKI AND REP. MCGEE voting no.

Motion:

SENATOR WATERMAN MOVED TO ACCEPT THE PREVIOUS FREE CONFERENCE COMMITTEE REPORT AS AMENDED. MOTION FAILED 2-4 WITH SENATOR WATERMAN, REP. BOHARSKI, REP. MCGEE, AND REP. WYATT voting no.

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 374

Call to Order: By **CHAIRMAN DON HARGROVE**, on April 22, 1997, at 9:10 a.m., in Room 331.

ROLL CALL

Members Present:

Sen. Don Hargrove (R)
Sen. Daryl Toews (R)
Sen. Mignon Waterman (D)
Rep. William E. Boharski (R)
Rep. Daniel W. McGee (R)
Rep. Diana E. Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Services Division
Jodi Jones, Committee Secretary

HEARING ON SB 374

REP. DAN MCGEE asked what the new higher registry is trying to accomplish. **Mary Ann Wellbank, Department of Health and Human Services**, said what is expected is every state will report their new hirers to a state system which is uploaded to the federal system. She said if there is a custodial parent that has a case in Arizona, they can go directly to the new hirer registry and find where that person is working. If the person is working in Montana they can refer the case to Montana or send an income withholding order to Montana.

REP. MCGEE said if you put in all of your child support enforcement cases and put in all of the court orders the federal system will have the Montana version of the new hirers. Can somebody in Arizona find this person by accessing the database? **Mary Ann Wellbank** said they can find out through the national system beginning in 1998 whether that person has an order or not.

REP. MCGEE said can they find someone through the Department of Labor? **Mary Ann Wellbank** said yes if they know what state that person is employed in.

REP. MCGEE asked if employers are currently providing new hirer information to the Department of Labor but not in a timely fashion. **Mary Ann Wellbank** stated that was true.

Mary Ann Wellbank said they had a proposed amendment that read "information provided by an employer to the Department of Revenue for administration of the unemployment insurance program may be used by the Department of Human Services to comply with section 313."

SENATOR DON HARGROVE asked if the time was really the only important thing in this system. **Mary Ann Wellbank** said they could at least have some information for other states to check for, but it will likely be out-of-date because it is reported on a quarterly basis.

REP. MCGEE asked if they are only accomplishing one goal by getting the database, but it is not done in a timely matter. **Mary Ann Wellbank** said that was correct.

REP. MCGEE said he has to provide information on his employees every quarter to the Department of Labor.

SENATOR HARGROVE asked when you hire someone, how long before you have to report them. **REP. MCGEE** said you can wait till the next quarter. If you hire in the beginning of January you don't have to report them until March.

REP. MCGEE said once any of this information is in any database it is accessible by anybody so the privacy issue is not the key problem here. He said there is a Constitutional issue of the trial by jury and this needs to be eliminated from the bill. **SENATOR HARGROVE** said he agreed.

REP. MCGEE said he also thought the whereas' number 1 and 3 need to be put in the bill. (EXHIBIT 1) This would allow them some time to get an exemption from the federal government. **Mary Ann Wellbank** said to apply for the exemption they would have to show the steps of how they were going to amend the Constitution.

SENATOR MIGNON WATERMAN said in the first Free Conference Committee we asked the Department to seek an exemption on this and that is in the bill. This part is null and void if they are granted that exemption. The whereas says we need to amend our Constitution and she thought they were stronger without that whereas in there. They already have the language asking for an exemption. **SENATOR HARGROVE** said he agreed and that it shouldn't be a whereas, but part of the law as to what we are going to do.

REP. MCGEE said he also agreed but what kind of language can be put in there to address this? **SENATOR WATERMAN** said in amendment 68, page 119, line 5, this language addresses this. **Mary Ann Wellbank** said the only question that would arise is how far would they have to go before the denial is final. She said it might have to be pursued in court or after the hearing before an exemption would go into effect.

SENATOR DARYL TOEWS said he had a problem with that because they should refuse to do it period, rather than going halfway and then trying to get the exemption.

REP. BILL BOHARSKI said Congress wrote the law and if the state needs to amend its Constitution they have five years to comply.

SENATOR HARGROVE said we want to avoid amending our Constitution.

REP. MCGEE said what we need to say to the federal government is that section 395 has been provided and the Montana Legislature finds this conflicts with our Constitution and the Legislature does not intend to change its Constitution to conform with this and the state will seek an exemption based on this language.

Mary Ann Wellbank said all they have to do is research case laws and show that in the past there has been no trial by jury.

SENATOR WATERMAN said she didn't feel comfortable passing this conceptually and would like some amendments.

REP. MCGEE said he felt comfortable with the social security issue because they already have that information out there.

SENATOR TOEWS asked if they were still leaving the new hire in?

REP. MCGEE said they might as well have it because they are already doing it.

{Tape: 1; Side: A; Approx. Time Count: 9:35 a.m.; Comments:
Committee recessed to do amendments, they reconvened at 10:20
a.m..}

SENATOR HARGROVE explained the amendments (EXHIBIT 2).

Motion:

SENATOR TOEWS MOVED TO ADOPT THE AMENDMENT (EXHIBIT 2).

Discussion:

SENATOR WATERMAN asked if this replaced the whereas'. SENATOR HARGROVE said they would not be there.

SENATOR WATERMAN asked if new section A would be there. SENATOR HARGROVE stated no.

SENATOR HARGROVE said they would adopt the first Free Conference Committee report plus this amendment minus the trial by jury sections.

SENATOR TOEWS said he would like to leave new section A in there.

REP. MCGEE discussed the amendment and some suggested changed language in the amendment (EXHIBIT 2).

Vote:

MOTION TO ADOPT THE AMENDMENT PASSED UNANIMOUSLY.

Motion:

SENATOR WATERMAN MOVED TO ADOPT THE FIRST CONFERENCE COMMITTEE REPORT WITH THE AMENDMENT THAT WAS JUST ADOPTED.

Discussion:

REP. MCGEE said amendment 35 and 52 of the previous Conference Committee report deal with the trial by jury issues and they should be stricken (EXHIBIT 3).

SENATOR WATERMAN said she would include that in her motion.

Motion:

REP. BOHARSKI MADE A SUBSTITUTE MOTION TO ADOPT A CONCEPTUAL AMENDMENT THAT ADDRESSES THE NEW HIRER REPORTING AND SOCIAL SECURITY NUMBER REQUIREMENTS OF THE ACT AND THAT WE CITE ARTICLE 2, SECTION 10, OF THE MONTANA CONSTITUTION. MOTION FAILED 3-3 WITH SENATOR HARGROVE, SENATOR WATERMAN, AND REP. WYATT voting no.

Discussion:

REP. MCGEE said he is trying to figure out how this will be challenged in court if necessary and who does what to whom. If we did not have certain sections like the new hirer in there, then the federal government could come back and say we are out of compliance and then the Attorney General would have to defend us based on our Constitution. If we put everything in the way the federal government wants it, how it goes to court is important. REP. BOHARSKI said just because we agreed to comply doesn't mean it still can't be challenged on the basis of the Constitution.

Vote:

MOTION TO ADOPT THE FIRST FREE CONFERENCE COMMITTEE WITH THE NEW AMENDMENT AND THE STRIKING OF THE JURY TRIAL FAILED 3-3 WITH SENATOR TOEWS, REP. BOHARSKI AND REP. MCGEE voting no.

Discussion:

REP. MCGEE said the main concern he has is all of this information going into a federal database, rather than having it be administered by the State of Montana. Mary Ann Wellbank said they will upload the Montana database to the federal level.

SENATOR WATERMAN said her problem with the new hirer is the 20 day period is hard for businesses to comply with.

REP. MCGEE said he is reluctant to go back to the House with almost the same amendments that they had before. He asked what the Senate would do if the bill went back to the form it was in when it came out of House Judiciary. SENATOR TOEWS said he didn't think it would pass.

SENATOR WATERMAN said if we are not going to comply, why have the bill?

SENATOR TOEWS said they have to come up with something and he suggested taking out the new hire. He said right now they are not negotiating with the federal government because they have not offered them any plan. If they want to negotiate, they need to put something out there.

REP. BOHARSKI said hypothetically, if we pass this without the provisions that we don't like because they are objectional, the federal government is now forced to take affirmative action. They will go through the hearing process and the minute they make their first move, the Attorney General will file for an injunction in federal court. He is going to look at section 395 of this bill and tell the judge that the federal government cannot withhold this funding from us. Our local federal judge will rule in favor of this because he lives here. The federal government is forced to appeal and if the judge doesn't grant the injunction the worse case scenario is the Governor will call us in for a special session and 51 people can vote this bill in and we never lost a dime of federal money.

SENATOR HARGROVE said that is a possible scenario.

SENATOR WATERMAN said the other scenario is we have asked the department to seek exemptions and those section will be null and void if those exemptions are granted. If they get waivers those sections are null and void. If the federal government overturns these sections as being unconstitutional, they are null and void. If Congress amends these provisions they are null and void. And all of these provisions sunset in two years. It is fine for us to argue this on the merits of philosophy, but there are 17,000 kids out there who are dependant on these funds for food and shelter and she is not willing to put them at risk or put the state at the cost of a special session.

SENATOR HARGROVE said the word Congressman Rick Hill used was "realistically" and these provision cannot become any stronger.

REP. MCGEE said he would change his vote to a yes to adopt this Conference Committee.

Motion:

SENATOR WATERMAN MOVED TO ADOPT THE AMENDMENTS FROM THE FIRST FREE CONFERENCE COMMITTEE REPORT AND ADD THE AMENDMENT THAT WAS

April 22, 1997

Page 6 of 7

VOTED UPON EARLIER. MOTION PASSED 5-1 WITH REP. BOHARSKI voting
no.

WHEREAS, section 395 of federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) allows a grace period for states to amend their constitutions in order to comply with PRWORA; and

WHEREAS, the Montana Legislature believes that it is necessary to amend Article II, section 10, of the Montana Constitution in order to comply with the new hire requirements of PRWORA; and

WHEREAS, the Montana Legislature believes that it is necessary to amend Article II, section 26, of the Montana Constitution in order to comply with the provision of PRWORA prohibiting a jury trial in a paternity proceeding.

NEW SECTION. Section A. Failure to notify -- misdemeanor.

(1) A judge who issues a child support order shall include as a part of the order a requirement that the obligor comply with the notice requirements of subsection (3).

(2) If the department issues a child support order, the department shall include notification of the provisions of subsection (3) as a part of the order.

(3) If an obligor becomes delinquent in the payment of support, the obligor shall notify the child support enforcement division within 10 days of becoming delinquent. The notification must include the name and address of the obligor's current employer, if any.

(4) An obligor who purposely, knowingly, or negligently fails to comply with the requirement of subsection (3) is guilty of a misdemeanor and upon conviction shall be punished by a fine of up to \$500, imprisonment in the county jail for up to 10 days, or both.

Free Conference Com.

EXHIBIT NO. 2

DATE 4-22-97 9:00 AM

BILL NO. SB 374

(5)(a) The department of public health and human services shall do everything reasonably within its power to obtain, as soon as possible, federal government exemptions from the provisions listed in subsection (4).

(b) Because section 395 of federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) allows a grace period for states to amend their constitutions in order to comply with PRWORA, and because the Montana legislature believes that it is necessary to amend Article II, section 26, of the Montana Constitution in order to comply with the provision of PRWORA prohibiting a jury trial in a paternity proceeding and therefore has not complied in [this act] with the PRWORA prohibition of a jury trial in a paternity proceeding, the department of public health and human services shall seek a federal government exemption from the jury trial prohibition in PRWORA as the first exemption it seeks under subsection (5)(a).

Free Conference Com-
NO. 3
DATE 4-22-97 9:00 AM
BILL NO. SB 374

Amendments to Senate Bill No. 374
Reference Bill, As Amended, Copy

For the Free Conference Committee

Prepared by John MacMaster
April 17, 1997

1. Title, line 9.
Following: "HIRES;"
Insert: "AND A DIRECTORY OF NEW HIRES;"
2. Title, line 11.
Following: "NUMBERS;"
Insert: "AVAILABILITY OF SOCIAL SECURITY NUMBERS"
3. Page 1, lines 19 and 20.
Strike: "ESTABLISHING" on line 19 through "COMMITTEE;" on line 20
4. Title, line 21.
Following: "~~40-4-105,~~"
Insert: "37-1-307, 40-1-107, 40-4-105,"
5. Title, line 29.
Following: "~~50-15-403,~~"
Insert: "50-15-403,"
Following: "~~61-5-107,~~"
Insert: "61-5-107,"
6. Title, line 30.
Strike: "A"
7. Title, page 2, line 1.
Strike: "DATE"
Insert: "DATES"
8. Page 2, line 6.
Strike: "13"
Insert: "15"
9. Page 2, line 17.
Strike: "9"
Insert: "11"
10. Page 2, line 21.
Insert: "[(1) "Date of hire" means the first day that an
employee starts work for which the employee is owed
compensation by the payor of income.]"
Renumber: subsequent subsections

11. Page 3, line 3.

Insert: "[(3) (a) "Employee" means a person 18 years of age or older who performs labor in this state for an employer in this state for compensation and for whom the employer withholds federal or state tax liabilities from the employee's compensation.

(b) The term does not include an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting pursuant to [section 9] with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.] "

Renumber: subsequent subsections

12. Page 3, line 17.

Insert: "[(8) "Labor organization" means a labor union, union local, union affiliate, or union hiring hall.] "

Renumber: subsequent subsections

13. Page 3, line 30.

Insert: "[(12) "Rehire" means the first day, following a termination of employment, that an employee begins to again perform work or provide services for a payor. Termination of employment does not include temporary separations from employment, such as unpaid medical leave, an unpaid leave of absence, or a temporary or seasonal layoff.] "

Renumber: subsequent subsections

14. Page 5, line 15.

Insert: "[(8) An employer or labor organization shall report a newly hired or rehired employee. Information reported by an employer must be electronically compared to the information data base to align an obligor who owes a duty of support with a source of income. When a match is revealed in a IV-D case, a notice will, if appropriate to the case, be promptly transmitted to the employer directing the employer to commence withholding for the payment of the obligor's support obligation.] "

Renumber: subsequent subsections

15. Page 6, line 12 and line 19.

Strike: "13]"

Insert: "15"

16. Page 6, line 29.

Following: "other"

Insert: "[social security number, other]"

17. Page 7, line 1.

Following: "if any,"

Insert: "[social security number, if any,]"

18. Page 14, line 6.

Insert: "NEW SECTION. Section 9. Directory of new hires -- employer reporting requirements. (1) (a) An employer doing

business in the state shall report to the department the hiring or rehiring of an employee to whom the employer anticipates paying income.

(b) An employer shall report the hiring or rehiring of an employee by submitting a copy of the employee's completed W-4 form or, at the option of the employer, its informational equivalent or any other format agreed to by the department. The report must include the employee's name, date of hire, social security number, and residential and mailing addresses, and the name, address, and federal identification number of the employer. The report may include the employee's date of birth.

(c) If an employer provides health or medical insurance coverage for an employee and the coverage may be extended to the employee's children, the employer may, along with the date the employee becomes eligible for coverage, provide that information as part of the new hire report under subsection (1)(b).

(2) Transmission of the reports must be by first-class mail, electronic or magnetic transmission, including facsimile transmission, or any other format agreed to by the department. Written reports must be submitted within 20 days of the employee's date of hire or rehire. Reports transmitted electronically or magnetically may be made by two transmissions monthly, if necessary, not less than 12 or more than 16 days apart.

(3) An employer who has employees in two or more states and who transmits new hire reports electronically or magnetically may comply with this section by designating one of the states in which there is an employee and transmitting the report of new hires to that state. A multistate employer who elects to report to only one state shall give written notice of the state to which the employer will transmit new reports. As required by 42 U.S.C. 653a (b)(1)(B), this notice must be transmitted to the secretary of the federal department of health and human services.

(4) An employer providing reports is not liable to the employee for the disclosure or any subsequent use by the processing center of the information."

Renumber: subsequent sections

19. Page 14, line 10.

Following: "department"

Insert: "[and the employee W-4 forms or similar forms transmitted to the department]"

20. Page 17, line 8.

Insert: "NEW SECTION. Section 11. Automated access to financial records -- confidentiality -- no liability. (1) For the purposes of this section, unless the context otherwise indicates, the following definitions apply:

(a) "Account" means a savings, checking, deposit and withdrawal, demand deposit, money market, profit and loss, or time deposit account opened by a depositor in a financial institution.

(b) "Depositor" means a person, share account holder, sole proprietor, or joint owner of an account in a financial

institution in this state.

(c) "Financial institution" means:

(i) a depository institution, as defined in section 3(c) of the federal deposit insurance act, 12 U.S.C. 1813(C);

(ii) an institution-affiliated party, as defined in the federal deposit insurance act, 12 U.S.C. 1813(U);

(iii) any state credit union, as defined in 32-3-102, or federal credit union, as defined in section 101 of the federal credit union act, 12 U.S.C. 1752, including an institution-affiliated party of such a credit union, as defined in section 206(r) of the act, 12 U.S.C. 1786(R); and

(iv) any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in the state.

(d) "Obligor" means a person who owes a debt for child, spousal, or medical support as determined by the department or as specified by order of a tribunal of competent jurisdiction, the amount of which exceeds \$500 or a total of 3 months debt, whichever is less.

(2) (a) Upon written request from the department, a financial institution shall run a data match of the department's list of obligors with the financial institution's depositors and provide the information in a computer or other reasonable format accessible by the financial institution. The department may not request the information referred to in this subsection from a financial institution more than once in each calendar quarter.

(b) The information on an obligor found to be a depositor at a financial institution must include the obligor's full name, social security number or other taxpayer identification number, and account number. If normally kept by the financial institution, the information must also include the mailing address, employment address, and any other information that identifies the obligor

(c) The financial institution shall provide the requested information within 30 days of the request from the department.

(3) The department shall run a computer match of all obligors with the information from the financial institution required in subsection (2). If there is a match between an obligor and a depositor, the financial institution must, upon request of the department, provide additional information within 30 days, including, but not limited to:

(a) verification of the obligor's full name and social security number;

(b) the financial institution's account number;

(c) the nature of the account or accounts held by the obligor;

(d) the funds available in the account less any preexisting encumbrance held by the financial institution; and

(e) any taxes, penalties, interest, or other costs to be legally imposed on the account if the account is accessed prior to a maturity date.

(4) The amounts available in an obligor's account do not include amounts available pursuant to overdraft coverage offered by the financial institution.

(5) The financial institution shall honor a subsequent

appropriate lien from the department sent to the financial institution.

(6) (a) A financial institution receiving a data request, data match, or lien from the department may not provide notice to an obligor identified in the information submitted to the department. Failure to provide notice does not constitute a violation of the financial institution's duty of good faith to its customers.

(b) A notice given by a financial institution to an obligor identified by the department subjects the financial institution to the contempt authority of the department under 40-5-226.

(7) The department shall pay a financial institution a reasonable fee for providing the information required in subsection (2), not to exceed the actual documented costs incurred by the financial institution.

(8) Information requested by the department and provided by a financial institution under this section is confidential and may be used only for IV-D purposes. Use of information for any other purpose without the authorization of the department subjects the user to a civil penalty of not more than \$500 per name per use.

(9) A financial institution is not liable to a person for:

(a) a disclosure of information to the department under this section;

(b) encumbering or surrendering assets held by the financial institution in response to a notice of lien or levy issued by the department; or

(c) any other action under this section taken in good faith to comply with the requirements of this section as long as the action is reasonable."

Renumber: subsequent sections

21. Page 18, line 20.

Following: "funds"

Insert: "as directed in the income-withholding order"

22. Page 18, line 21.

Strike: "as directed in the income-withholding order"

23. Page 20, line 7.

Strike: "11"

Insert: "13"

24. Page 22, line 6.

Strike: "12]"

Insert: "14]"

25. Page 23, line 7.

Strike: "13"

Insert: "15"

26. Page 26, line 28.

Insert: "Section 22. Section 37-1-307, MCA, is amended to read:

"37-1-307. Board authority. (1) A board may:

(a) hold hearings as provided in this part;
(b) issue subpoenas and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint, issued by a majority vote of board members not serving on the screening panel described in subsection (1)(e), and signed by the presiding officer of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) compel attendance of witnesses and the production of documents. Subpoenas may be enforced as provided in 2-4-104.

(e) establish a screening panel that determines whether there is reasonable cause to believe that a licensee has violated a statute or rule justifying disciplinary proceedings. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(f) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding its licensees and license applicants.

(3) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board must keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act."

Section 23. Section 40-1-107, MCA, is amended to read:

"40-1-107. Form of application, license, marriage certificate, and consent. (1) The director of the department of public health and human services shall prescribe the form for an application for a marriage license, which must include the following information:

(a) name, sex, address, social security number, and date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, the party's name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of public health and

human services shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage."

(3) The license, certificate, or consent may not contain the social security number, and the department must keep the number from this source confidential, except that the department may use the number in administering Title IV-D of the Social Security Act.

Section 24. Section 40-4-105, MCA, is amended to read:

"40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses. (1) The verified petition in a proceeding for dissolution of marriage or legal separation ~~shall~~ must allege that the marriage is irretrievably broken and ~~shall~~ must set forth:

(a) the age, occupation, and residence of each party and ~~his~~ the party's length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding the commencement of this proceeding; or

(ii) there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service file a verified response. ~~No~~ A decree may not be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

(6) The social security number, if known, of a person subject to a decree of dissolution or a support order must be recorded in the records relating to the matter. The recordkeeper must keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act."

Renumber: subsequent sections

27. Page 28, line 2.

Strike: "9l"
Insert: "11]"

28. Page 29, line 5.
Following: line 4
Insert: "[social security number,]"

29. Page 47, line 20.
Insert: "[(d) social security number;]"
ReNUMBER: subsequent subsections

30. Page 56, line 3.
Strike: "9l"
Insert: "11]"

31. Page 57, line 6.
Insert: "[(ii) social security number;]"
ReNUMBER: subsequent subsections

32. Page 58, line 19.
Following: "~~or~~"
Insert: "[; or]"

33. Page 58, line 21.
Following: "~~department~~"
Insert: "[(h) a financial institution uses information provided
by the department pursuant to [section 11] for any other
purpose without the authorization of the department]"

34. Page 65, line 1.
Following: "~~jury.~~"
Insert: "[The matter must be heard by a judge sitting without a
jury.]"

35. Page 74, line 22 and line 24.
Page 84, line 16 and line 19
Strike: "RECEIPT"
Insert: "the date"

36. Page 74, line 26.
Following: "EXISTED."
Insert: "This notice is different from the notice required by 40-
5-305."

37. Page 75, line 2.
Following: "delinquent"
Insert: "who has determined that an obligor is delinquent"

38. Page 75, line 16.
Following: line 15
Insert: "required under 40-5-306"

39. Page 77, line 25.
Following: "place"
Insert: "or continue"

40. Page 78, line 3.

Following: "order"

Insert: "or may authorized issuance of an income deduction order"

41. Page 78, lines 7 and 8.

Strike: "THAT" on line 7 through "OR THAT" on line 8

42. Page 81, line 30 through line 2 of page 82

Strike: "A" on page 81, line 30 through "WITHHOLDING" on line 2
of page 82

43. Page 84, line 21.

Following: "EXISTED."

Insert: "This notice is different from the notice required by
subsection (2) (b)."

44. Page 87, line 19.

Following: "withhold"

Insert: "or may issue an order to withhold income"

45. Page 87, lines 28 and 29.

Strike: "OR" on line 28 through "EXISTED" on line 29

46. Page 88, line 21.

Strike: "CONTINUE TO"

47. Page 89, line 30.

Insert: "[(b) social security number;]"

Renumber: subsequent subsections

48. Page 92, line 1.

Strike: "AND"

Insert: ", "

49. Page 92, line 2.

Following: "obligor"

Insert: ", and, if known, the social security number of the
obligor"

50. Page 101, line 5.

Following: "jury."

Insert: "[The action must be heard by a judge sitting without a
jury.]"

51. Page 103, line 23.

Strike: "91"

Insert: "11]"

52. Page 104, line 19.

Insert: "[(ii) social security number;]"

Renumber: subsequent subsections

53. Page 105, line 13.

Insert: "[(11) The social security number of a person subject to
a paternity determination under this part must be recorded

in the records relating to the matter. The recordkeeper must keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]"

54. Page 109, line 11.

Insert: "Section 92. Section 50-15-403, MCA, is amended to read:

"50-15-403. Preparation and filing of death or fetal death certificate. (1) A person in charge of disposition of a dead body or fetus that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death shall obtain personal data on the deceased, including the deceased's social security number, if any, or, in the case of a fetal death, on the parents that is required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate.

(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician or the coroner having jurisdiction for medical certification of the cause of death. The person in charge of disposition shall obtain the completed certification of the cause of death from the physician or coroner and shall, within the time that the department may by rule prescribe, file the death or fetal death certificate with the local registrar in the registration area where the death occurred."

Renumber: subsequent sections

55. Page 110, line 30.

Insert: "Section 94. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form furnished by the department. A motorcycle endorsement is required for the operation of a quadricycle. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must state the full name, date of birth, sex, and residence address of the applicant, and if the application is for a commercial vehicle operator's license, social security number, must briefly describe the applicant, and must state whether:

(a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country;

(b) any commercial operator license has ever been suspended or revoked; or

(c) an application has ever been refused, and, if so, the

date of and reason for suspension, revocation, or refusal.

(3) The department must keep the applicant's social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.

~~(3)~~(4) When application is received from an applicant previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction. The driving record may be transmitted manually or by electronic medium. When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance."

Renumber: subsequent sections

56. Page 116, line 18 through line 30 of page 117

Strike: sections 92 and 93 in their entirety

Renumber: subsequent sections

57. Page 118, line 1 and line 3.

Strike: "9]"

Insert: "11]"

58. Page 118, line 4 and line 5.

Strike: "10]"

Insert: "12]"

59. Page 118, line 6 and line 7.

Strike: "11]"

Insert: "13]"

60. Page 118, line 8 and line 9.

Strike: "12]"

Insert: "14]"

61. Page 118, line 10 and line 11.

Strike: "13]"

Insert: "15]"

62. Page 119, line 16.

Following: "~~10,~~"

Insert: "10,"

Strike: "11"

Insert: "13"

63. Page 119, line 19.

Following: "TERMINATION"

Insert: "--request for federal exemptions"

Strike: "[THIS ACT]"

Insert: "(1) [Sections 9, 11, 22 through 24, 94, and 96, and the bracketed language in sections 1 through 3, 9, 20, 40, 45, and 83]"

64. Page 119, line 21.
Following: "PROGRAM"
Strike: "OR"
Insert: "and"
Strike: "ONE OR MORE OF"

65. Page 119, line 22.
Strike: "WELFARE PROGRAMS"
Insert: "program relating to temporary assistance to needy families"

66. Page 119, line 24.
Insert: "(2) [Sections 9, 11, 22 through 24, 94, and 96, and the bracketed language in sections 1 through 3, 9, 20, 40, 45, and 83] terminates on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996."
(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted this state an exemption from one of the following provisions, the provision terminates on the date the exemption takes effect:
 (a) [section 9];
 (b) [section 11];
 (c) [sections 22 through 24];
 (d) [section 94];
 (e) [section 96];
 (f) [the bracketed provisions in sections 1 through 3, 9, 20, 40, 45, and 83].
(4) The department of public health and human services shall do everything reasonably within its power to obtain as soon as possible federal government exemptions from the provisions listed in subsection (3).

ROLL CALL

FREE CONFERENCE or CONFERENCE COMMITTEE

ON BILL NO. SB 374

DATE 4/22/97 9:00 A.M.

NAME	PRESENT	ABSENT	EXCUSED
Sen. Don Hargrove	X		
Sen. Daryl Jones	X		
Sen. Mignon Waterman	X		
Rep. Dan McGee	X		
Rep. Bill Boharski	X		
Rep. Diane Wyatt	X		

LEGISLATIVE TAPE LOG

COMMITTEE:

Free Conference on SB 374

DATE:

4-22-97

MINUTES

CONTENT NOTES

9:10-9:35

Discussion of SB 374

10:20-10:50

Reconvened - Adoption of amendments
and 1st free conference committee report



FREE CONFERENCE COMMITTEE

on Senate Bill 374

Report No. 2, April 22, 1997

Page 1 of 15

Mr. President and Mr. Speaker:

We, your FREE Conference Committee on Senate Bill 374, met and considered Senate Bill 374 in its entirety, and the Free Conference Committee Report dated April 18, 1997.

We recommend that Senate Bill 374 (reference copy - salmon) be amended as follows:

1. Title, line 7.

Strike: "AND"

Insert: ", "

2. Title, line 9.

Following: "HIRES"

Insert: ", AND A DIRECTORY OF NEW HIRES"

3. Title, line 11.

Following: "NUMBERS,"

Insert: "AVAILABILITY OF SOCIAL SECURITY NUMBERS,"

4. Title, lines 19 and 20.

Strike: "ESTABLISHING" on line 19 through "COMMITTEE;" on line 20

5. Title, line 21.

Following: "~~40-4-105,~~"

Insert: "37-1-307, 40-1-107, 40-4-105,"

6. Title, line 29.

Following: "~~50-15-403,~~"

Insert: "50-15-403,"

Following: "~~61-5-107,~~"

Insert: "61-5-107,"

7. Title, line 30.

Following: "DATES"

Strike: "AND"

Insert: ", "

Strike: "A"

ADOPT

REJECT

SB 374
FCC #2

861051CC.STS

8. Title, page 2, line 1.

Strike: "DATE"

Insert: "DATES, AND A TERMINATION DATE"

9. Page 2, line 6.

Strike: "13"

Insert: "15"

10. Page 2, line 17.

Strike: "9"

Insert: "11"

11. Page 2.

Following: line 20

Insert: "[(1) "Date of hire" means the first day that an employee starts work for which the employee is owed compensation by the payor of income.]"

Renumber: subsequent subsections

12. Page 2.

Following: line 29

Insert: "[(3) (a) "Employee" means a person 18 years of age or older who performs labor in this state for an employer in this state for compensation and for whom the employer withholds federal or state tax liabilities from the employee's compensation.

(b) The term does not include an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting pursuant to [section 9] with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.]"

Renumber: subsequent subsections

13. Page 3.

Following: line 16

Insert: "[(8) "Labor organization" means a labor union, union local, union affiliate, or union hiring hall.]"

Renumber: subsequent subsections

14. Page 3.

Following: line 29

Insert: "[(12) "Rehire" means the first day, following a termination of employment, that an employee begins to again perform work or provide services for a payor. Termination of employment does not include temporary separations from employment, such as unpaid medical leave, an unpaid leave of absence, or a temporary or seasonal layoff.]"

Renumber: subsequent subsections

15. Page 5.

Following: line 14

Insert: "[(8) An employer or labor organization shall report a newly hired or rehired employee. Information reported by an employer must be electronically compared to the information data base to align an obligor who owes a duty of support with a source of income. When a match is revealed in a IV-D case, a notice will, if appropriate to the case, be promptly transmitted to the employer directing the employer to commence withholding for the payment of the obligor's support obligation.]"

Renumber: subsequent subsections

16. Page 6, line 12 and line 19.

Strike: "13"

Insert: "15"

17. Page 6, line 29.

Following: "~~other~~"

Insert: "[social security number, other]"

18. Page 7, line 1.

Following: "~~if any,~~"

Insert: "[social security number, if any,]"

19. Page 12, line 28.

Strike: "9"

Insert: "11"

20. Page 14, line 6.

Insert: "**NEW SECTION.** **Section 9. Directory of new hires -- employer reporting requirements.** (1) (a) An employer doing business in the state shall report to the department the hiring or rehiring of an employee to whom the employer anticipates paying income.

(b) An employer shall report the hiring or rehiring of an employee by submitting a copy of the employee's completed W-4 form or, at the option of the employer, its informational equivalent or any other format agreed to by the department. The report must include the employee's name, date of hire, social security number, and residential and mailing addresses, and the name, address, and federal identification number of the employer. The report may include the employee's date of birth.

(c) If an employer provides health or medical insurance coverage for an employee and the coverage may be extended to the employee's children, the employer may, along with the date the employee becomes eligible for coverage, provide that information as part of the new hire report under subsection (1)(b).

(2) Transmission of the reports must be by first-class mail, electronic or magnetic transmission, including facsimile

transmission, or any other format agreed to by the department. Written reports must be submitted within 20 days of the employee's date of hire or rehire. Reports transmitted electronically or magnetically may be made by two transmissions monthly, if necessary, not less than 12 or more than 16 days apart.

(3) An employer who has employees in two or more states and who transmits new hire reports electronically or magnetically may comply with this section by designating one of the states in which there is an employee and transmitting the report of new hires to that state. A multistate employer who elects to report to only one state shall give written notice of the state to which the employer will transmit new reports. As required by 42 U.S.C. 653a(b)(1)(B), this notice must be transmitted to the secretary of the federal department of health and human services.

(4) An employer providing reports is not liable to the employee for the disclosure or any subsequent use by the processing center of the information."
Renumber: subsequent sections

21. Page 14, line 10.

Following: "department"

Insert: "[and the employee W-4 forms or similar forms transmitted to the department]"

22. Page 17, line 8.

Insert: "**NEW SECTION. Section 11. Automated access to financial records -- confidentiality -- no liability -- definitions.** (1)

For the purposes of this section, unless the context otherwise indicates, the following definitions apply:

(a) "Account" means a savings, checking, deposit and withdrawal, demand deposit, money market, profit and loss, or time deposit account opened by a depositor in a financial institution.

(b) "Depositor" means a person, share account holder, sole proprietor, or joint owner of an account in a financial institution in this state.

(c) "Financial institution" means:

(i) a depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c);

(ii) an institution-affiliated party, as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(u);

(iii) any state credit union, as defined in 32-3-102, or federal credit union, as defined in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752, including an institution-affiliated party of such a credit union, as defined in section 206(r) of the act, 12 U.S.C. 1786(r); and

(iv) any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity

authorized to do business in the state.

(d) "Obligor" means a person who owes a debt for child, spousal, or medical support as determined by the department or as specified by order of a tribunal of competent jurisdiction, the amount of which exceeds \$500 or a total of 3 months debt, whichever is less.

(2) (a) Upon written request from the department, a financial institution shall run a data match of the department's list of obligors with the financial institution's depositors and provide the information in a computer or other reasonable format accessible by the financial institution. The department may not request the information referred to in this subsection from a financial institution more than once in each calendar quarter.

(b) The information on an obligor found to be a depositor at a financial institution must include the obligor's full name, social security number or other taxpayer identification number, and account number. If normally kept by the financial institution, the information must also include the mailing address, employment address, and any other information that identifies the obligor.

(c) The financial institution shall provide the requested information within 30 days of the request from the department.

(3) The department shall run a computer match of all obligors with the information from the financial institution required in subsection (2). If there is a match between an obligor and a depositor, the financial institution shall, upon request of the department, provide additional information within 30 days, including but not limited to:

(a) verification of the obligor's full name and social security number;

(b) the financial institution's account number;

(c) the nature of the account or accounts held by the obligor;

(d) the funds available in the account less any preexisting encumbrance held by the financial institution; and

(e) any taxes, penalties, interest, or other costs to be legally imposed on the account if the account is accessed prior to a maturity date.

(4) The amounts available in an obligor's account do not include amounts available pursuant to overdraft coverage offered by the financial institution.

(5) The financial institution shall honor a subsequent appropriate lien from the department sent to the financial institution.

(6) (a) A financial institution receiving a data request, data match, or lien from the department may not provide notice to an obligor identified in the information submitted to the department. Failure to provide notice does not constitute a violation of the financial institution's duty of good faith to

its customers.

(b) A notice given by a financial institution to an obligor identified by the department subjects the financial institution to the contempt authority of the department under 40-5-226.

(7) The department shall pay a financial institution a reasonable fee for providing the information required in subsection (2), not to exceed the actual documented costs incurred by the financial institution.

(8) Information requested by the department and provided by a financial institution under this section is confidential and may be used only for IV-D purposes. Use of information for any other purpose without the authorization of the department subjects the user to a civil penalty of not more than \$500 per name per use.

(9) A financial institution is not liable to a person for:

(a) a disclosure of information to the department under this section;

(b) encumbering or surrendering assets held by the financial institution in response to a notice of lien or levy issued by the department; or

(c) any other action under this section taken in good faith to comply with the requirements of this section as long as the action is reasonable."

Renumber: subsequent sections

23. Page 18, line 20.

Following: "funds"

Insert: "as directed in the income-withholding order"

24. Page 18, line 21.

Strike: "as directed in the income-withholding order"

25. Page 20, line 7.

Strike: "11"

Insert: "13"

26. Page 22, line 6.

Strike: "12"

Insert: "14"

27. Page 23, line 7.

Strike: "13"

Insert: "15"

28. Page 26, line 28.

Insert: "**Section 22.** Section 37-1-307, MCA, is amended to read:

"**37-1-307. Board authority.** (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint, issued by a majority vote of board members not serving on the screening panel described in subsection (1)(e), and signed by the presiding officer of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) compel attendance of witnesses and the production of documents. Subpoenas may be enforced as provided in 2-4-104.

(e) establish a screening panel that determines whether there is reasonable cause to believe that a licensee has violated a statute or rule justifying disciplinary proceedings. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(f) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding its licensees and license applicants.

(3) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential; except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act."

Section 23. Section 40-1-107, MCA, is amended to read:

"40-1-107. Form of application, license, marriage certificate, and consent. (1) The director of the department of public health and human services shall prescribe the form for an application for a marriage license, which must include the following information:

(a) name, sex, address, social security number, and date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, the party's name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of public health and human services shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage."

(3) The license, certificate, or consent may not contain the social security number, and the department shall keep the number from this source confidential, except that the department may use the number in administering Title IV-D of the Social Security Act.

Section 24. Section 40-4-105, MCA, is amended to read:

"40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses. (1) The verified petition in a proceeding for dissolution of marriage or legal separation ~~shall~~ must allege that the marriage is irretrievably broken and ~~shall~~ must set forth:

(a) the age, occupation, and residence of each party and ~~his~~ the party's length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding the commencement of this proceeding; or

(ii) there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service file a verified response. ~~No~~ A decree may not be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

(6) The social security number, if known, of a person subject to a decree of dissolution or a support order must be recorded in the records relating to the matter. The recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act."

Renumber: subsequent sections

29. Page 28, line 2.

Strike: "9"

Insert: "11"

30. Page 29, line 3.

Following: "~~number~~"

Insert: "[social security number,]"

31. Page 47.

Following: line 19

Insert: "(d) social security number;"

Renumber: subsequent subsections

32. Page 56, line 3.

Strike: "9"

Insert: "11"

33. Page 57.

Following: line 5

Insert: "[(ii) social security number;]"

Renumber: subsequent subsections

34. Page 58, line 19.

Following: "~~or~~"

Insert: "[; or]"

35. Page 58, line 21.

Following: "~~department~~"

Insert: "[(h) a financial institution uses information provided by the department pursuant to [section 11] for any other purpose without the authorization of the department]"

36. Page 74, line 22 and line 24.

Strike: "RECEIPT"

Insert: "the date"

37. Page 74, line 26.

Following: "EXISTED."

Insert: "This notice is different from the notice required by 40-5-305."

38. Page 75, line 2.

Following: "delinquent"

Insert: "who has determined that an obligor is delinquent"

39. Page 77, line 16.

Following: line 15

Insert: "required under 40-5-305"

40. Page 77, line 25.

Following: "place"

Insert: "or continue"

41. Page 78, line 3.

Strike: "or"

Insert: ", "

Following: "order"

Insert: ", or may authorize issuance of an income-deduction order"

42. Page 78, lines 7 and 8.

Strike: "THAT" on line 7 through "OR THAT" on line 8

43. Page 81, line 30 through line 2 of page 82

Strike: "A" on page 81, line 30 through "WITHHOLDING" on line 2 of page 82

Insert: "a delinquency occurs"

44. Page 84, lines 16 and 19.

Strike: "RECEIPT"

Insert: "the date"

45. Page 84, line 21.

Following: "EXISTED."

Insert: "This notice is different from the notice required by subsection (2)(b)."

46. Page 87, line 19.

Strike: "or"

Insert: ", "

Following: "withhold"

Insert: "income, or may issue an order to withhold income"

47. Page 87, lines 28 and 29.

Strike: "OR" on line 28 through "EXISTED" on line 29

48. Page 88, line 21.
Strike: "CONTINUE TO"

49. Page 89.
Following: line 29
Insert: "(b) social security number;"
Renumber: subsequent subsections

50. Page 92, line 1.
Strike: "AND"
Insert: ", "

51. Page 92, line 2.
Following: "~~obligor~~"
Insert: ", and, if known, the social security number of the obligor"

52. Page 103, line 23.
Strike: "9"
Insert: "11"

53. Page 104.
Following: line 18
Insert: "[(ii) social security number;]"
Renumber: subsequent subsections

54. Page 105, line 13.
Insert: "[(11) The social security number of a person subject to a paternity determination under this part must be recorded in the records relating to the matter. The recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]"

55. Page 109, line 11.
Insert: "**Section 93.** Section 50-15-403, MCA, is amended to read:
"50-15-403. Preparation and filing of death or fetal death certificate. (1) A person in charge of disposition of a dead body or fetus that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death shall obtain personal data on the deceased, including the deceased's social security number, if any, or, in the case of a fetal death, on the parents that is required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate.

(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician or the coroner having jurisdiction for medical

certification of the cause of death. The person in charge of disposition shall obtain the completed certification of the cause of death from the physician or coroner and shall, within the time that the department may by rule prescribe, file the death or fetal death certificate with the local registrar in the registration area where the death occurred.""
Renumber: subsequent sections

56. Page 110, line 30.

Insert: "Section 95. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form furnished by the department. A motorcycle endorsement is required for the operation of a quadricycle. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must state the full name, date of birth, sex, ~~and~~ residence address of the applicant, and if the application is for a commercial vehicle operator's license, social security number, must briefly describe the applicant, and must state whether:

(a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country;

(b) any commercial operator license has ever been suspended or revoked; or

(c) an application has ever been refused, and, if so, the date of and reason for suspension, revocation, or refusal.

(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.

~~(3)~~ (4) When application is received from an applicant previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction. The driving record may be transmitted manually or by electronic medium. When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.""

Renumber: subsequent sections

57. Page 116, line 18 through line 30 of page 117
Strike: sections 92 and 93 in their entirety
Renumber: subsequent sections

58. Page 118, line 1 and line 3.
Strike: "9"
Insert: "11"

59. Page 118, line 4 and line 5.
Strike: "10"
Insert: "12"

60. Page 118, line 6 and line 7.
Strike: "11"
Insert: "13"

61. Page 118, line 8 and line 9.
Strike: "12"
Insert: "14"

62. Page 118, line 10 and line 11.
Strike: "13"
Insert: "15"

63. Page 118, line 13.
Strike: "(1)"

64. Page 118, lines 24 through 28.
Strike: subsection (2) in its entirety

65. Page 119, line 16.
Following: "~~10,~~"
Insert: "10,"
Strike: "11"
Insert: "13"

66. Page 119, line 19.
Following: "**TERMINATION**"
Insert: "-- request for federal exemptions"
Strike: "**[THIS ACT] TERMINATES**"
Insert: "(1) [Sections 9, 11, 22 through 24, 93, and 95] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] terminate"

67. Page 119, line 21.

Following: "PROGRAM"

Strike: "OR"

Insert: "and"

Strike: "ONE OR MORE OF"

68. Page 119, line 22.

Strike: "WELFARE PROGRAMS"

Insert: "program relating to temporary assistance to needy families"

69. Page 119, line 24.

Insert: "(2) [Sections 9, 11, 22 through 24, 93, and 95] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

- (a) [section 9];
- (b) [section 11];
- (c) [sections 22 through 24];
- (d) [section 93];
- (e) [section 95];
- (f) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89].

(4) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted this state an exemption from one of the following provisions, the provision terminates on the date the exemption takes effect:

- (a) [section 9];
- (b) [section 11];
- (c) [sections 22 through 24];
- (d) [section 93];
- (e) [section 95];
- (f) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89].

(5)(a) The department of public health and human services shall do everything reasonably within its power to obtain, as soon as possible, federal government exemptions from the provisions listed in subsection (4).

(b) Because section 395(c) of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996

(PRWORA) allows a grace period for states to amend their constitutions in order to comply with PRWORA and because the Montana legislature believes that the section of PRWORA prohibiting a jury trial in a paternity proceeding violates Article II, section 26, of the Montana Constitution and is therefore rejected, the department of public health and human services shall seek a federal government exemption from the jury trial prohibition in PRWORA as the first exemption it seeks under subsection (5) (a).

(6) [Sections 9, 11, 22 through 24, 93, and 95] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] terminate July 1, 1999.

(7) If the bracketed language in [section 1 through 3, 10, 25, 45, and 89] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement."

And that this FREE Conference Committee report be adopted.

For the Senate:


Senator Don Hargrove, Chair

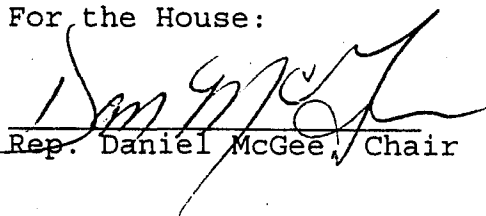

Senator Daryl Toews

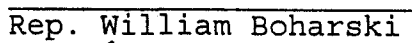

Senator Mignon Waterman

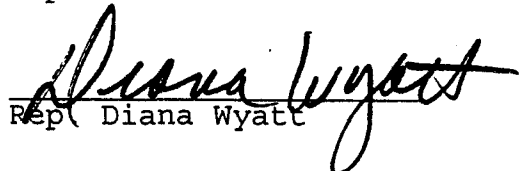

Amd. Coord.


Sec. of Senate

For the House:


Rep. Daniel McGee, Chair


Rep. William Boharski


Rep. Diana Wyatt

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 374

Call to Order: By **CHAIRMAN DON HARGROVE**, on April 23, 1997, at 2:56 p.m., in Room 331.

ROLL CALL

Members Present:

Sen. Don Hargrove (R)
Sen. Daryl Toews (R)
Sen. Mignon Waterman (D)
Rep. William E. Boharski (R)
Rep. Daniel W. McGee (R)
Rep. Diana E. Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Services Division
Jodi Jones, Committee Secretary

HEARING ON SB 374

SENATOR HARGROVE said they are going to consider the part concerning the restrictions on social security numbers for commercial driver licenses.

John MacMaster, Legislative Services Division, said the bill amended section 61-5-107 and that when a person applies for a motor vehicle license, they have to give their social security number. He discussed the prior Free Conference Committee on page 11, sub-section (3). **(EXHIBIT 1)**

REP. BILL BOHARSKI asked if they are talking about the reference copy of the bill. **John MacMaster** said in a Free Conference Committee they have the whole bill in front of them and it can be changed anyway the committee likes. What they need to do is vote for the former Free Conference Committee report and put in the new language in sub-section (3).

SENATOR HARGROVE said they need to adopt the Free Conference Committee report #2 which will then become Free Conference Committee report #3 which will have the amendments included.

Motion:

SENATOR DARYL TOEWS MOVED TO ADOPT THE FREE CONFERENCE COMMITTEE REPORT #2 WITH THE AMENDMENTS TO BE CALLED FREE CONFERENCE COMMITTEE REPORT #3.

Discussion:

SENATOR MIGNON WATERMAN said the reason they are applying this exception is because commercial drivers are required to give their social security number so they don't get multiple licenses in other states. She asked how long has the Department of Transportation been collecting these social security numbers and sending them to this national registry. **Marvin Dye, Department of Transportation**, said he was not sure, but he thought it has been since the early 1990's.

REP. BOHARSKI asked the language that requires these licenses to have a social security number on them, where is that in the code. **Brenda Nordlund, Department of Justice**, said it is a requirement under federal law, Title 49, section 31303. She said they collect the social security numbers for CDL's as a matter of policy and practice to comply with the federal law.

REP. BOHARSKI asked if the Department of Transportation collects social security numbers in Montana without the statutory requirement. **Brenda Nordlund** said the Department of Justice issues commercial drivers licenses and they are collecting the information in accordance to their program requirements in order to issue a commercial drivers license under the federal law.

REP. BOHARSKI asked if there is anything in Montana statute that requires a commercial drivers license to have the driver's social security number on it. **Brenda Nordland** said there is nothing in Montana statute that requires that.

REP. BOHARSKI said as this bill sits before them in the reference copy, they do not have to deal with the social security issues and this motion is not necessary. The issue of confidentiality of drivers license social security numbers is not an issue in this copy of the bill. He said the Governor will sign the reference copy of this bill and so will the House. The only ones that have to pass it is the Senate.

John MacMaster said as originally introduced in the Senate, the bill did amend this section that is before them. When the bill got over to the House, the Judiciary Committee decided they did not want that amendment in the bill. If they take out that amendment there is no other change in that section. But to put the requirement of the social security number back in the bill and to require it to be confidential except in certain instances, then they would have to adopt the prior report with this change. That report will then have all of these things in it.

SENATOR WATERMAN said it was her understanding that the House bill had stripped out new hirer, trial by jury, social security, and the financial database. This bill would not meet the federal requirements and how could the Governor sign such a bill.

SENATOR HARGROVE said the motion before them does meet the federal requirements. He drew a diagram on the board and explained it.

REP. WYATT said give her a title and she will vote for it and the department will execute rules in such a way that they hope it manages to meet the federal level. A bill that is a title and leaves the department open to create rules and regulations is not something she is willing to vote for.

Vote:

MOTION TO ADOPT THE FREE CONFERENCE COMMITTEE REPORT #2 WITH THE PROPOSED AMENDMENTS TO BE CALLED FREE CONFERENCE COMMITTEE REPORT #3 PASSED 5-1 WITH REP. BOHARSKI voting no.

51. Page 92, line 2.

Following: "~~obligor~~"

Insert: ", and, if known, the social security number of the obligor"

52. Page 103, line 23.

Strike: "9"

Insert: "11"

53. Page 104.

Following: line 18

Insert: "[(ii) social security number;]"

Renumber: subsequent subsections

54. Page 105, line 13.

Insert: "[(11) The social security number of a person subject to a paternity determination under this part must be recorded in the records relating to the matter. The recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]"

55. Page 109, line 11.

Insert: "**Section 93.** Section 50-15-403, MCA, is amended to read:

"50-15-403. Preparation and filing of death or fetal death certificate. (1) A person in charge of disposition of a dead body or fetus that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death shall obtain personal data on the deceased, including the deceased's social security number, if any, or, in the case of a fetal death, on the parents that is required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate.

(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician or the coroner having jurisdiction for medical certification of the cause of death. The person in charge of disposition shall obtain the completed certification of the cause of death from the physician or coroner and shall, within the time that the department may by rule prescribe, file the death or fetal death certificate with the local registrar in the registration area where the death occurred."

Renumber: subsequent sections

→ 56. Page 110, line 30.

Insert: "**Section 95.** Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form furnished by the department. A motorcycle endorsement is required for the operation of a quadricycle. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of

application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must state the full name, date of birth, sex, and residence address of the applicant, and if the application is for a commercial vehicle operator's license, social security number, must briefly describe the applicant, and must state whether:

(a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country;

(b) any commercial operator license has ever been suspended or revoked; or

(c) an application has ever been refused, and, if so, the date of and reason for suspension, revocation, or refusal.

(3) The department shall keep the applicant's social security number from this source confidential, except that the number MAY BE USED FOR PURPOSES OF SUBTITLE VI OF TITLE 49 OF THE USC OR AS OTHERWISE PERMITTED BY STATE LAW ADMINISTERED BY THE DEPARTMENT, AND may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.

~~(3)~~(4) When application is received from an applicant previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction. The driving record may be transmitted manually or by electronic medium. When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance."

Renumber: subsequent sections

57. Page 116, line 18 through line 30 of page 117

Strike: sections 92 and 93 in their entirety

Renumber: subsequent sections

58. Page 118, line 1 and line 3.

Strike: "9"

Insert: "11"

59. Page 118, line 4 and line 5.

Strike: "10"

Insert: "12"

60. Page 118, line 6 and line 7.

Strike: "11"

Insert: "13"

61. Page 118, line 8 and line 9.

Strike: "12"

Insert: "14"

ROLL CALL

FREE CONFERENCE or CONFERENCE COMMITTEE

ON BILL NO. 374

DATE 4/23/97

NAME	PRESENT	ABSENT	EXCUSED
Sen. Hargrove	X		
Sen. Waterman	X		
Sen. Jones	X		
Rep. McGee	X		
Rep. Boharaki	X		
Rep. Wyatt	X		

LEGISLATIVE TAPE LOG

COMMITTEE:

Free Conference on SB 374

DATE:

4-23-97

MINUTES

2:56-3:19

CONTENT NOTES

Discussion and adoption of
Free Conference Report #3.



FREE CONFERENCE COMMITTEE

on Senate Bill 374
Report No. 3, April 23, 1997

Page 1 of 15

Mr. President and Mr. Speaker:

We, your FREE Conference Committee on Senate Bill 374, met and considered Senate Bill 374 in its entirety.

We recommend that Senate Bill 374 (reference copy - salmon) be amended as follows:

1. Title, line 7.

Strike: "AND"

Insert: ", "

2. Title, line 9.

Following: "HIRES"

Insert: ", AND A DIRECTORY OF NEW HIRES"

3. Title, line 11.

Following: "~~NUMBERS,~~"

Insert: "AVAILABILITY OF SOCIAL SECURITY NUMBERS,"

4. Title, lines 19 and 20.

Strike: "ESTABLISHING" on line 19 through "COMMITTEE;" on line 20

5. Title, line 21.

Following: "~~40-4-105,~~"

Insert: "37-1-307, 40-1-107, 40-4-105,"

6. Title, line 29.

Following: "~~50-15-403,~~"

Insert: "50-15-403,"

Following: "~~61-5-107,~~"

Insert: "61-5-107,"

7. Title, line 30.

Following: "DATES"

Strike: "AND"

Insert: ", "

Strike: "A"

ADOPT

REJECT

FCCR #3
SB 374

871523CC.SRF

8. Title, page 2, line 1.

Strike: "DATE"

Insert: "DATES, AND A TERMINATION DATE"

9. Page 2, line 6.

Strike: "13"

Insert: "15"

10. Page 2, line 17.

Strike: "9"

Insert: "11"

11. Page 2.

Following: line 20

Insert: "[(1) "Date of hire" means the first day that an employee starts work for which the employee is owed compensation by the payor of income.]"

Renumber: subsequent subsections

12. Page 2.

Following: line 29

Insert: "[(3) (a) "Employee" means a person 18 years of age or older who performs labor in this state for an employer in this state for compensation and for whom the employer withholds federal or state tax liabilities from the employee's compensation.
(b) The term does not include an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting pursuant to [section 9] with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.]"

Renumber: subsequent subsections

13. Page 3.

Following: line 16

Insert: "[(8) "Labor organization" means a labor union, union local, union affiliate, or union hiring hall.]"

Renumber: subsequent subsections

14. Page 3.

Following: line 29

Insert: "[(12) "Rehire" means the first day, following a termination of employment, that an employee begins to again perform work or provide services for a payor. Termination of employment does not include temporary separations from employment, such as unpaid medical leave, an unpaid leave of absence, or a temporary or seasonal layoff.]"

Renumber: subsequent subsections

15. Page 5.

Following: line 14

Insert: "[(8) An employer or labor organization shall report a newly hired or rehired employee. Information reported by an employer must be electronically compared to the information data base to align an obligor who owes a duty of support with a source of income. When a match is revealed in a IV-D case, a notice will, if appropriate to the case, be promptly transmitted to the employer directing the employer to commence withholding for the payment of the obligor's support obligation.]"

Renumber: subsequent subsections

16. Page 6, line 12 and line 19.

Strike: "13"

Insert: "15"

17. Page 6, line 29.

Following: "~~other~~"

Insert: "[social security number, other]"

18. Page 7, line 1.

Following: "~~if any,~~"

Insert: "[social security number, if any,]"

19. Page 12, line 28.

Strike: "9"

Insert: "11"

20. Page 14, line 6.

Insert: "NEW SECTION. Section 9. Directory of new hires

--**employer reporting requirements.** (1) (a) An employer doing business in the state shall report to the department the hiring or rehiring of an employee to whom the employer anticipates paying income.

(b) An employer shall report the hiring or rehiring of an employee by submitting a copy of the employee's completed W-4 form or, at the option of the employer, its informational equivalent or any other format agreed to by the department. The report must include the employee's name, date of hire, social security number, and residential and mailing addresses, and the name, address, and federal identification number of the employer. The report may include the employee's date of birth.

(c) If an employer provides health or medical insurance coverage for an employee and the coverage may be extended to the employee's children, the employer may, along with the date the

employee becomes eligible for coverage, provided that information as part of the new hire report under subsection (1)(b).

(2) Transmission of the reports must be by first-class mail, electronic or magnetic transmission, including facsimile transmission, or any other format agreed to by the department. Written reports must be submitted within 20 days of the employee's date of hire or rehire. Reports transmitted electronically or magnetically may be made by two transmissions monthly, if necessary, not less than 12 or more than 16 days apart.

(3) An employer who has employees in two or more states and who transmits new hire reports electronically or magnetically may comply with this section by designating one of the states in which there is an employee and transmitting the report of new hires to that state. A multistate employer who elects to report to only one state shall give written notice of the state to which the employer will transmit new reports. As required by 42 U.S.C. 653a(b)(1)(B), this notice must be transmitted to the secretary of the federal department of health and human services.

(4) An employer providing reports is not liable to the employee for the disclosure or any subsequent use by the processing center of the information."

Renumber: subsequent sections

21. Page 14, line 10.

Following: "department"

Insert: "[and the employee W-4 forms or similar forms transmitted to the department]"

22. Page 17, line 8.

Insert: "NEW SECTION. **Section 11. Automated access to financial records -- confidentiality -- no liability -- definitions.**

(1) For the purposes of this section, unless the context otherwise indicates, the following definitions apply:

(a) "Account" means a savings, checking, deposit and withdrawal, demand deposit, money market, profit and loss, or time deposit account opened by a depositor in a financial institution.

(b) "Depositor" means a person, share account holder, sole proprietor, or joint owner of an account in a financial institution in this state.

(c) "Financial institution" means:

(i) a depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c);

(ii) an institution-affiliated party, as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(u);

(iii) any state credit union, as defined in 32-3-102, or federal credit union, as defined in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752, including an institution-

affiliated party of such a credit union, as defined in section 206(r) of the act, 12 U.S.C. 1786(r); and

(iv) any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in the state.

(d) "Obligor" means a person who owes a debt for child, spousal, or medical support as determined by the department or as specified by order of a tribunal of competent jurisdiction, the amount of which exceeds \$500 or a total of 3 months debt, whichever is less.

(2) (a) Upon written request from the department, a financial institution shall run a data match of the department's list of obligors with the financial institution's depositors and provide the information in a computer or other reasonable format accessible by the financial institution. The department may not request the information referred to in this subsection from a financial institution more than once in each calendar quarter.

(b) The information on an obligor found to be a depositor at a financial institution must include the obligor's full name, social security number or other taxpayer identification number, and account number. If normally kept by the financial institution, the information must also include the mailing address, employment address, and any other information that identifies the obligor

(c) The financial institution shall provide the requested information within 30 days of the request from the department.

(3) The department shall run a computer match of all obligors with the information from the financial institution required in subsection (2). If there is a match between an obligor and a depositor, the financial institution shall, upon request of the department, provide additional information within 30 days, including but not limited to:

(a) verification of the obligor's full name and social security number;

(b) the financial institution's account number;

(c) the nature of the account or accounts held by the obligor;

(d) the funds available in the account less any preexisting encumbrance held by the financial institution; and

(e) any taxes, penalties, interest, or other costs to be legally imposed on the account if the account is accessed prior to a maturity date.

(4) The amounts available in an obligor's account do not include amounts available pursuant to overdraft coverage offered by the financial institution.

(5) The financial institution shall honor a subsequent appropriate lien from the department sent to the financial institution.

(6) (a) A financial institution receiving a data request,

data match, or lien from the department may not provide notice to an obligor identified in the information submitted to the department. Failure to provide notice does not constitute a violation of the financial institution's duty of good faith to its customers.

(b) A notice given by a financial institution to an obligor identified by the department subjects the financial institution to the contempt authority of the department under 40-5-226.

(7) The department shall pay a financial institution a reasonable fee for providing the information required in subsection (2), not to exceed the actual documented costs incurred by the financial institution.

(8) Information requested by the department and provided by a financial institution under this section is confidential and may be used only for IV-D purposes. Use of information for any other purpose without the authorization of the department subjects the user to a civil penalty of not more than \$500 per name per use.

(9) A financial institution is not liable to a person for:

(a) a disclosure of information to the department under this section;

(b) encumbering or surrendering assets held by the financial institution in response to a notice of lien or levy issued by the department; or

(c) any other action under this section taken in good faith to comply with the requirements of this section as long as the action is reasonable."

Renumber: subsequent sections

23. Page 18, line 20.

Following: "funds"

Insert: "as directed in the income-withholding order"

24. Page 18, line 21.

Strike: "as directed in the income-withholding order"

25. Page 20, line 7.

Strike: "11"

Insert: "13"

26. Page 22, line 6.

Strike: "12"

Insert: "14"

27. Page 23, line 7.

Strike: "13"

Insert: "15"

28. Page 26, line 28.

Insert: "Section 22. Section 37-1-307, MCA, is amended to read:

"37-1-307. Board authority. (1) A board may:

(a) hold hearings as provided in this part;
(b) issue subpoenas and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint, issued by a majority vote of board members not serving on the screening panel described in subsection (1)(e), and signed by the presiding officer of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) compel attendance of witnesses and the production of documents. Subpoenas may be enforced as provided in 2-4-104.

(e) establish a screening panel that determines whether there is reasonable cause to believe that a licensee has violated a statute or rule justifying disciplinary proceedings. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(f) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding its licensees and license applicants.

(3) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act."

Section 23. Section 40-1-107, MCA, is amended to read:

"40-1-107. Form of application, license, marriage certificate, and consent. (1) The director of the department of public health and human services shall prescribe the form for an application for a marriage license, which must include the following information:

(a) name, sex, address, social security number, and date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, the party's name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of public health and human services shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage."

(3) The license, certificate, or consent may not contain the social security number, and the department shall keep the number from this source confidential, except that the department may use the number in administering Title IV-D of the Social Security Act.

Section 24. Section 40-4-105, MCA, is amended to read:

"40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses. (1) The verified petition in a proceeding for dissolution of marriage or legal separation shall must allege that the marriage is irretrievably broken and shall must set forth:

(a) the age, occupation, and residence of each party and his the party's length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding the commencement of this proceeding; or

(ii) there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service file a verified response. ~~No~~ A decree may not be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance,

collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

(6) The social security number, if known, of a person subject to a decree of dissolution or a support order must be recorded in the records relating to the matter. The recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act."

Renumber: subsequent sections

29. Page 28, line 2.

Strike: "9"

Insert: "11"

30. Page 29, line 3.

Following: "~~number,~~"

Insert: "[social security number,]"

31. Page 47.

Following: line 19

Insert: "(d) social security number;"

Renumber: subsequent subsections

32. Page 56, line 3.

Strike: "9"

Insert: "11"

33. Page 57.

Following: line 5

Insert: "[(ii) social security number;]"

Renumber: subsequent subsections

34. Page 58, line 19.

Following: "~~or~~"

Insert: "[; or]"

35. Page 58, line 21.

Following: "~~department~~"

Insert: "[(h) a financial institution uses information provided by the department pursuant to [section 11] for any other purpose without the authorization of the department]"

36. Page 74, line 22 and line 24.

Strike: "RECEIPT"

Insert: "the date"

37. Page 74, line 26.

Following: "EXISTED."

Insert: "This notice is different from the notice required by 40-5-305."

38. Page 75, line 2.

Following: "delinquent"

Insert: "who has determined that an obligor is delinquent"

39. Page 77, line 16.

Following: line 15

Insert: "required under 40-5-305"

40. Page 77, line 25.

Following: "place"

Insert: "or continue"

41. Page 78, line 3.

Strike: "or"

Insert: ", "

Following: "order"

Insert: ", or may authorize issuance of an income-deduction order"

42. Page 78, lines 7 and 8.

Strike: "THAT" on line 7 through "OR THAT" on line 8

43. Page 81, line 30 through line 2 of page 82

Strike: "A" on page 81, line 30 through "WITHHOLDING" on line 2 of page 82

Insert: "a delinquency occurs"

44. Page 84, lines 16 and 19.

Strike: "RECEIPT"

Insert: "the date"

45. Page 84, line 21.

Following: "EXISTED."

Insert: "This notice is different from the notice required by subsection (2)(b)."

46. Page 87, line 19.

Strike: "or"

Insert: ", "

Following: "withhold"

Insert: "income, or may issue an order to withhold income"

47. Page 87, lines 28 and 29.

Strike: "OR" on line 28 through "EXISTED" on line 29

48. Page 88, line 21.
Strike: "CONTINUE TO"

49. Page 89.
Following: line 29
Insert: "(b) social security number;"
Renummer: subsequent subsections

50. Page 92, line 1.
Strike: "AND"
Insert: ", "

51. Page 92, line 2.
Following: "~~obligor~~"
Insert: ", and, if known, the social security number of the obligor"

52. Page 103, line 23.
Strike: "9"
Insert: "11"

53. Page 104.
Following: line 18
Insert: "[(ii) social security number;]"
Renummer: subsequent subsections

54. Page 105, line 13.
Insert: "[(11) The social security number of a person subject to a paternity determination under this part must be recorded in the records relating to the matter. The recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]"

55. Page 109, line 11.
Insert: "**Section 93.** Section 50-15-403, MCA, is amended to read:
"50-15-403. Preparation and filing of death or fetal death certificate. (1) A person in charge of disposition of a dead body or fetus that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death shall obtain personal data on the deceased, including the deceased's social security number, if any, or, in the case of a fetal death, on the parents that is required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate.
(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician or the coroner having jurisdiction for medical

certification of the cause of death. The person in charge of disposition shall obtain the completed certification of the cause of death from the physician or coroner and shall, within the time that the department may by rule prescribe, file the death or fetal death certificate with the local registrar in the registration area where the death occurred."

Renumber: subsequent sections

56. Page 110, line 30.

Insert: "Section 95. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form furnished by the department. A motorcycle endorsement is required for the operation of a quadricycle. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must state the full name, date of birth, sex, ~~and~~ residence address of the applicant, and if the application is for a commercial vehicle operator's license, social security number, must briefly describe the applicant, and must state whether:

(a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country;

(b) any commercial operator license has ever been suspended or revoked; or

(c) an application has ever been refused, and, if so, the date of and reason for suspension, revocation, or refusal.

(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.

~~(3)~~ (4) When application is received from an applicant previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction. The driving record may be transmitted manually or by electronic medium. When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the

driver's record in this state in the original instance.""

Renumber: subsequent sections

57. Page 116, line 18 through line 30 of page 117

Strike: sections 92 and 93 in their entirety

Renumber: subsequent sections

58. Page 118, line 1 and line 3.

Strike: "9"

Insert: "11"

59. Page 118, line 4 and line 5.

Strike: "10"

Insert: "12"

60. Page 118, line 6 and line 7.

Strike: "11"

Insert: "13"

61. Page 118, line 8 and line 9.

Strike: "12"

Insert: "14"

62. Page 118, line 10 and line 11.

Strike: "13"

Insert: "15"

63. Page 118, line 13.

Strike: "(1)"

64. Page 118, lines 24 through 28.

Strike: subsection (2) in its entirety

65. Page 119, line 16.

Following: "~~10,~~"

Insert: "10,"

Strike: "11"

Insert: "13"

66. Page 119, line 19.

Following: "TERMINATION"

Insert: "-- request for federal exemptions"

Strike: "[THIS ACT] TERMINATES"

Insert: "(1) [Sections 9, 11, 22 through 24, 93, and 95] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] terminate"

67. Page 119, line 21.

Following: "PROGRAM"

Strike: "OR"

Insert: "and"

Strike: "ONE OR MORE OF"

68. Page 119, line 22.

Strike: "WELFARE PROGRAMS"

Insert: "program relating to temporary assistance to needy families"

69. Page 119, line 24.

Insert: "(2) [Sections 9, 11, 22 through 24, 93, and 95] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

- (a) [section 9];
- (b) [section 11];
- (c) [sections 22 through 24];
- (d) [section 93];
- (e) [section 95];
- (f) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89].

(4) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted this state an exemption from one of the following provisions, the provision terminates on the date the exemption takes effect:

- (a) [section 9];
- (b) [section 11];
- (c) [sections 22 through 24];
- (d) [section 93];
- (e) [section 95];
- (f) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89].

(5)(a) The department of public health and human services shall do everything reasonably within its power to obtain, as soon as possible, federal government exemptions from the provisions listed in subsection (4).

(b) Because section 395(c) of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) allows a grace period for states to amend their constitutions in order to comply with PRWORA and because the Montana legislature believes that the section of PRWORA prohibiting a jury trial in a paternity proceeding violates Article II, section 26, of the Montana Constitution and is therefore rejected, the department of public health and human services shall seek a federal government exemption from the jury trial prohibition in PRWORA as the first exemption it seeks under subsection (5)(a).

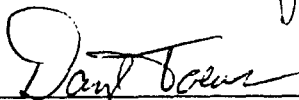
(6) [Sections 9, 11, 22 through 24, 93, and 95] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] terminate July 1, 1999.

(7) If the bracketed language in [section 1 through 3, 10, 25, 45, and 89] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement."

And that this FREE Conference Committee report be adopted.

For the Senate:


Senator Don Hargrove, Chair

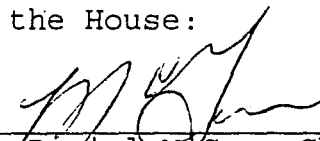

Senator Daryl Toews

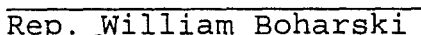

Senator Mignon Waterman

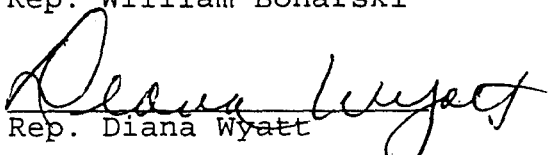

Amd. Coord.


Sec. of Senate

For the House:


Rep. Daniel McGee, Chair


Rep. William Boharski


Rep. Diana Wyatt

3. Career Information System (06)

- a. User Fees-MCIS License Revenue (total) \$1,500 \$1,500
 \$1,500 larger schools - discounts for smaller

OFFICE OF PUBLIC INSTRUCTION (3501)

1. OPI Indirect Cost Pool (06)

- a. Indirect Cost Draws 17% 17%

MONTANA UNIVERSITY SYSTEM (5100)

1. Because certain programs or functions are enterprise-like in nature, must maintain a business approach in their operations, and may have large numbers of individual rates for the various products sold or services provided for the following programs or functions, the legislature defines "rates and fees" to mean those rates or fees necessary to maintain a fiscal year ending fund balance in the defined range.

<u>Program</u>	<u>Ending Fund Balance Range</u>
University System Flexible Benefits	\$0 to \$100,000
University System Group Insurance	1,000,000 to 2,000,000

Approved May 9, 1997

CHAPTER NO. 552

[SB 374]

AN ACT IMPLEMENTING THE CHILD SUPPORT PROVISIONS OF THE FEDERAL PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996; CREATING AN ADVISORY BOARD TO ADVISE THE DEPARTMENT; INSTITUTING AUTOMATED, MASS CASE PROCESSING TECHNIQUES FOR CHILD SUPPORT, INCLUDING A CENTRAL CASE REGISTRY, A CENTRALIZED UNIT FOR TRACKING AND DISBURSING CHILD SUPPORT COLLECTIONS, AND A DIRECTORY OF NEW HIRES; RESTRUCTURING EXISTING CHILD SUPPORT PROCEDURES BY INCLUDING REVISED INCOME-WITHOLDING PROCEDURES, REVISED PATERNITY ESTABLISHMENT PROCESSES, AVAILABILITY OF SOCIAL SECURITY NUMBERS, EXPANDED ACCESS TO PUBLIC AND PRIVATE SOURCES OF INFORMATION FOR LOCATE PURPOSES, AVAILABILITY OF OTHER AUTOMATED LOCATE SOURCES, WORK REQUIREMENTS FOR PARENTS OWING SUPPORT, ENHANCED INTERSTATE ENFORCEMENT PROCEDURES INVOLVING INTERSTATE LIENS AND SUBPOENAS, AND EXPANDED LICENSE SUSPENSION PROCEDURES TO INCLUDE RECREATIONAL LICENSES; PROVIDING THAT ADMINISTRATIVE ORDERS HAVE FULL FORCE AND EFFECT WITHOUT FILING THEM WITH THE DISTRICT COURT; REVISING ADMINISTRATIVE REGISTRATION PROCEDURES; GENERALLY REVISING THE UNIFORM INTERSTATE FAMILY SUPPORT ACT TO MAKE CHANGES REQUIRED BY THE FEDERAL ACT; AMENDING SECTIONS 19-2-1004, 19-18-612, 19-19-504, 19-20-706, 19-21-212, 25-13-608, 37-1-307, 40-1-107, 40-4-105, 40-4-204, 40-4-206, 40-5-103, 40-5-149, 40-5-151, 40-5-161, 40-5-162, 40-5-163, 40-5-164, 40-5-173, 40-5-188, 40-5-189, 40-5-194, 40-5-195, 40-5-196, 40-5-201, 40-5-203, 40-5-206, 40-5-210, 40-5-225, 40-5-226, 40-5-227, 40-5-232, 40-5-233, 40-5-235, 40-5-236, 40-5-237, 40-5-263, 40-5-264, 40-5-271, 40-5-273, 40-5-274, 40-5-302, 40-5-303, 40-5-304, 40-5-305, 40-5-306,

40-5-307, 40-5-308, 40-5-309, 40-5-310, 40-5-312, 40-5-313, 40-5-314, 40-5-315, 40-5-403, 40-5-404, 40-5-412, 40-5-413, 40-5-414, 40-5-421, 40-5-423, 40-5-443, 40-5-701, 40-5-702, 40-5-703, 40-5-704, 40-5-709, 40-5-710, 40-5-711, 40-6-102, 40-6-105, 40-6-111, 40-6-115, 40-6-116, 40-6-117, 50-15-210, 50-15-223, 50-15-403, 53-2-613, 61-5-107, 87-1-102, AND 87-1-108, MCA; AND PROVIDING EFFECTIVE DATES, CONTINGENT TERMINATION DATES, AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 2] grants the department of public health and human services authority to adopt rules to implement [sections 1 through 15]. The rules should address routine procedural and operational matters and supplementary information necessary for the efficient and effective operation of the child support information and processing unit. The department should weigh the need for the information against the personal intrusiveness of the requested information and the difficulty of obtaining the information and should adopt rules that minimize the personal intrusiveness of the requested information and that minimize the costs to the department, employers, and employees in response to any difficulties in obtaining the information.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 11], unless the context requires otherwise, the following definitions apply:

(1) "Date of hire" means the first day that an employee starts work for which the employee is owed compensation by the payor of income.]

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) (a) "Employee" means a person 18 years of age or older who performs labor in this state for an employer in this state for compensation and for whom the employer withholds federal or state tax liabilities from the employee's compensation.

(b) The term does not include an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting pursuant to [section 9] with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.]

(4) "Employer" means a person, firm, corporation, association, governmental entity, or labor organization that engages an employee for compensation and withholds federal or state tax liabilities from the employee's compensation.

(5) "Foreign support order" means a support order entered or last modified by a court or administrative agency of another state, the District of Columbia, the Commonwealth of Puerto Rico, a territory or insular possession subject to the jurisdiction of the United States, an Indian tribe, or a foreign jurisdiction.

(6) "Income withholding" generally means procedures for directing a payor to withhold from an obligor's income an amount sufficient to pay the obligor's support obligation and to defray arrears that are or may become due. Specifically:

(a) when preceded by "IV-D", income withholding means the procedures set out in Title 40, chapter 5, part 4; and

(b) when preceded by "non IV-D", income withholding means those cases in which an immediate income-withholding order is issued under 40-5-315 after January 1, 1994.

(7) "Interstate case" means a case referred to the department by, or from the department to, another IV-D agency.

[(8) "Labor organization" means a labor union, union local, union affiliate, or union hiring hall.]

(9) "Obligee" means the payee under a support order or a person or agency entitled to receive support payments.

(10) "Obligor" means a person who is obligated to pay support under a support order.

(11) "Payor" means:

(a) an employer or person engaged in a trade or business in this state who engages an employee for compensation; or

(b) when used in context with income withholding, means a person, firm, corporation, association, employer, trustee, political subdivision, state agency, or agent paying income to an obligor on a periodic basis.

[(12) "Rehire" means the first day, following a termination of employment, that an employee begins to again perform work or provide services for a payor. Termination of employment does not include temporary separations from employment, such as unpaid medical leave, an unpaid leave of absence, or a temporary or seasonal layoff.]

(13) "Support order" means a judgment, decree, or order, whether temporary or final, that:

(a) is for the benefit of a child or a state agency;

(b) provides for monetary support, health care, arrearages, or reimbursement;

(c) may include related costs and fees, interest, and similar other relief; and

(d) may include an order for maintenance to be paid to a former spouse when the former spouse is the custodial parent of a child for whom child support is awarded.

(14) "IV-D" or "IV-D case" means a case in which the department is providing services under the provisions of Title IV-D of the Social Security Act and the regulations promulgated under that act. A IV-D case also includes a case in which the department is collecting a support debt assigned to this or another state under Title IV-D.

Section 2. Child support information and processing unit. (1) The department shall establish and maintain a centralized child support case registry and payment processing unit. The purpose of this unit is to facilitate mass case processing by utilizing computer technology to identify parents and their income

and to initiate automated procedures to collect child support as it becomes due and payable.

(2) The case registry must include a data base of information concerning child support orders, all cases receiving IV-D services, and all district court and administrative cases with support orders entered or modified after October 1, 1998.

(3) The case registry must use automated systems to obtain information from federal, state, and local data bases with regard to the location of obligors and their income and assets. This information must be shared with the courts of this state and, upon request, may be shared with child support enforcement agencies of this and other states for the purpose of establishing paternity and establishing and enforcing child support obligations.

(4) To assist creditors, credit managers, and others who need timely verification of the existence of child support liens in IV-D cases, the case registry must include a directory of liens, which must include liens against an obligor's real and personal property filed by the department with other agencies and lien registries. Information in the lien registry may be made available through automated systems, which may include voice response units.

(5) Each IV-D case with a child support order must be electronically monitored so that when a timely payment of support is not made, enforcement action may be taken. To accomplish this purpose, payments due under a child support order must be paid to the department for processing and disbursement.

(6) In either a IV-D income-withholding case in this state or a state non IV-D case, if immediate income withholding is authorized after January 1, 1994, an employer or other payor of income shall pay all support withheld from an obligor's income to one centralized location as specified by the department.

(7) To facilitate automated disbursement of support payments, automated enforcement actions, and service of notice when required, an obligor or obligee must be directed to provide, and update as necessary, information sufficient to locate the obligor and obligee and to locate the obligor's income and assets.

[(8) An employer or labor organization shall report a newly hired or rehired employee. Information reported by an employer must be electronically compared to the information data base to align an obligor who owes a duty of support with a source of income. When a match is revealed in a IV-D case, a notice will, if appropriate to the case, be promptly transmitted to the employer directing the employer to commence withholding for the payment of the obligor's support obligation.]

(9) The department may enter into contracts or cooperative agreements with any person, business, firm, corporation, or state agency to establish, operate, or maintain the case registry and payment processing unit or any function or service afforded by the unit, provided that:

(a) the department is ultimately responsible for operation of the case registry and payment processing unit, including any function or service afforded by the unit;

(b) there is a board to act in an advisory capacity to the case registry and processing unit. The board shall advise the department in the policy, direction, control, and management of the case registry and processing unit and in determining forms, data processing needs, terms of contracts and cooperative agreements, and other similar technical requirements. Board members who are not employed by the department shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503. Except for members who represent the department, appointed board members shall serve for a term of 2 years. The board consists of five members as follows:

- (i) a district court judge nominated by the district court judges' association;
- (ii) a clerk of court nominated by the association of clerks of the district courts;
- (iii) the supreme court administrator or designee;
- (iv) two members, appointed by the department director, one from the child support enforcement division and one from the operations and technology division; and
- (v) a representative of a county data processing unit, nominated by the association of clerks of the district courts; and

(c) the costs charged to the department under the contract or cooperative agreement may not exceed the actual costs that the department would have incurred without the contract or cooperative agreement.

(10) The department may adopt rules to implement [sections 1 through 15]. Rules must be drafted, adopted, and applied in a manner that:

- (a) minimizes the personal intrusiveness on the employer or employee of any requested information;
- (b) minimizes the costs to the department and any employer or employee with respect to obtaining and submitting any requested information; and
- (c) maximizes the confidentiality and security of any employer or employee information that the department gathers under [sections 1 through 15].

Section 3. Case registry — abstracts — information required — mandatory updating. (1) There must be registered in the case registry an abstract of:

- (a) each case, including interstate cases, receiving IV-D services provided by the department;
- (b) each support order entered and each modification of an existing support order made in this state after October 1, 1998; and
- (c) each subsequent order or action establishing, modifying, adjusting, granting relief from, terminating, or otherwise affecting a support order in a registered case.

(2) Each abstract must include:

(a) the name, sex, [social security number, other] identification numbers, if any, date of birth, driver's license number, telephone number, and residential and mailing addresses of the parents;

(b) the child's name, date of birth, sex, [social security number, if any,] and residential address if different from that of the child's custodian;

(c) the name and location of the obligee if the obligee is a person or agency other than the child's parent;

(d) the name, address, and telephone number of the obligor's employer or of another payor of income to the obligor;

(e) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage, or if the child is not covered, information as to the availability of coverage for the child through the obligor's and obligee's employers; and

(f) any other information that the department considers relevant and requires by rule.

(3) The abstract of a support order must include:

(a) the amount of the support payment and supplemental support payments, if any, for each child and the amount of spousal maintenance if ordered in the same case;

(b) the specific day or dates the payment is due;

(c) the inclusive dates of the support obligation;

(d) the terms of any condition that may affect the amount of the payment, the due date, or the obligation to pay support;

(e) each subsequent judgment for support arrears and the amounts of any interest, late payment penalties, and fees included in the judgment;

(f) any specific child support lien imposed against real or personal property of the obligor;

(g) the terms of any medical and health coverage provision for the child; and

(h) the name and county of the judicial district or the name and address of the agency where the record of the case is located and the cause number or case identification number for the case.

(4) (a) For each IV-D case with a support order registered in the case registry, there must be a record of the date and the amount of support payments made by the obligor, dates and amounts of support collected from other sources, dates of distribution of support payments, names and locations of persons or agencies to whom support payments and collections were distributed, and the balance of support owed by the obligor.

(b) Except as provided in subsection (5), the department need not maintain payment records in a non IV-D case.

(5) A copy of each non IV-D income-withholding order must be included in the case registry. For each registered income-withholding order, there must be a record of payments received by the department from the payor under the income-withholding order, the date and amount of each payment, the date the department distributed the payment, and the person or agency to whom the payment was distributed.

(6) The statistical report required by the department under 50-15-302 may be combined with and made a part of the abstract of support order form.

(7) (a) Each support order entered or modified in this state after October 1, 1998, must include a requirement that the obligor and obligee update, as necessary, the information included in the abstract under subsection (2).

(b) The order must also provide that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the obligor or obligee, the court or agency taking the enforcement action may consider the due process requirements for notice and service of process to be met with respect to the party upon delivery of written notice by regular mail to the most recent address or employer address reported to the case registry.

(c) If the support order does not include the provisions required by subsections (7)(a) and (7)(b) or if the support order was entered or last modified in this state before October 1, 1998, the department may give written notice of the provisions to the obligor and obligee. Upon receipt of the notice, the provisions have the same force and effect on the obligor and obligee as if included in the support order.

Section 4. Registration procedures. (1) In a court case, before a decree, judgment, or order may be docketed, the parties to the action or their attorneys shall prepare, on a form prescribed by the department, the abstract of a support order required under [section 3(3)] and deliver it to the clerk of court whenever:

(a) a support order is entered or an existing order is modified after October 1, 1998;

(b) in an existing case not included under subsection (1)(a), the department has filed a notice of IV-D services and a support order is established, modified, adjusted, terminated, or otherwise affected or relief is granted from the support order; and

(c) in each case with a previously registered abstract, there is an action subsequent to registration that establishes, modifies, adjusts, terminates, grants relief from, or otherwise affects the support order in a registered case.

(2) The clerk of court shall deliver a completed abstract and copy of a non IV-D income-withholding order to the department within 5 working days of the receipt of an abstract or issuance of the non IV-D income-withholding order.

(3) (a) The department shall prepare and register abstracts of administrative support orders established by the department.

(b) For a foreign support order involving IV-D services from the department, the department shall attempt to acquire the information necessary for completion of the abstract from the person, court, or agency requesting IV-D

services, and to the extent the information is provided, the department shall enter the information into the registry.

(4) As an alternative to the preparation and delivery of abstracts and non IV-D income-withholding orders to the department, the department may enter into cooperative agreements with district courts, clerks of court, or other appropriate agencies of this and other states to gather and transmit the information through electronic information networking systems.

Section 5. Centralized payment center — mandatory payments to center. (1) Payments due under a support order must be paid through the department for processing and distribution to the person or agency entitled to receive the payment whenever:

(a) the case is receiving IV-D services; or

(b) the support obligation is payable through non IV-D income withholding.

(2) A support order entered or modified in this state after October 1, 1998, that excludes the obligor from paying support through income withholding must provide that:

(a) if the case is or later becomes a IV-D case or if support becomes payable through IV-D or non IV-D income withholding, support payments must be paid through the department; and

(b) a payment that is not made to the department does not constitute payment of support or credit toward satisfaction of the support obligation unless the payment is verified by the department to its satisfaction.

(3) (a) If a support order does not include the provisions required by subsection (2) or directs payment of support to a payee other than the department, the department may give written notice to the obligor and obligee directing or redirecting payments to the department. After receipt of the notice, payment other than as directed does not constitute payment of support or credit toward satisfaction of the support obligation.

(b) An obligor who redirects payments to the department is not liable to the obligee or answerable to the court for not making payments as directed by the court.

(c) While support is required to be paid through the department, the notice directing or redirecting payments to the department may not be superseded by any subsequent order of a court or agency directing the obligor to make payments other than to the department.

(4) After the obligor has been ordered or directed to make payments to the department under this section, the obligor shall make the payments to the department and is not entitled to credit against a support obligation for payment made to a person or agency other than the department.

(5) (a) When the obligor is paying support through IV-D or non IV-D income withholding, the income-withholding order must direct the payor to make the payments through the department.

(b) If a payor is directed by the income-withholding order to make payments to a payee other than the department, the department may redirect the payments to the department by written order to the employer or payor. The order supersedes any prior, inconsistent court or agency order.

(c) For as long as income withholding is appropriate to the case, the directive to the payor to make payments to the department may not be superseded by any subsequent order of a court or agency directing payments to any other payee.

(6) Payments of support that are received by the department in interstate cases or as the result of a writ of execution, warrant for distraint, state and federal tax offset, or similar enforcement remedy must be processed through the case management and payment processing unit.

(7) (a) If, through a private collection action, an obligee obtains a payment of support that must be processed and distributed through the case management and payment processing unit, the obligee shall forward the payment to the department within 5 working days of the receipt of the payment.

(b) If the department takes an enforcement action against the obligor because the obligee failed to timely forward a payment of support under subsection (7)(a), the obligee is liable in a civil action to the obligor for the amount that should have been forwarded to the department.

(8) (a) Payments made to the department under this section must be by cash, personal or business check, money order, automatic bank account withdrawal, certified funds, electronic funds transfer services, or any other means acceptable to the department.

(b) Payments may not be credited to the obligor's child support obligation until actually received by the department.

(c) The withholding of income by a payor or employer under an order to withhold issued under Title 40, chapter 5, part 3 or 4, is not alone sufficient for credit against an obligor's support obligation. Payments withheld from an obligor's income that are not actually received by the department may not be credited to the obligor's child support obligation. The payor or employer is liable to the obligor in a civil action initiated by the obligor for the amount withheld but not paid to the department.

(d) A check presented to the department as payment, whether by the obligor, the obligor's employer, or another payor on the obligor's behalf, that is dishonored by the issuing bank may not be credited to the obligor's child support obligation.

(e) A payment made out to or delivered to any other person or agency other than to the department may not be credited to the obligor's support obligation.

(9) An uncredited payment under this section is considered as still owed by the obligor and may be collected using any remedy available under law.

Section 6. Distribution of payments. (1) Support payments processed through the case processing unit must be promptly disbursed unless one of the following circumstances or a similar circumstance prevents prompt distribution:

(a) the location of the obligee is unknown;

(b) the support debt is in litigation or, in an income-withholding case, the income-withholding action is contested; or

(c) the department receives a payment that does not include sufficient information to identify the case or the obligee.

(2) A disbursement must comply with department rules for distribution in IV-D cases.

(3) If the department is unable to make a distribution because the obligee's location is unknown, the department shall return the payment to the obligor.

(4) If a payment properly distributed under this section is later determined by a court or by department decision to be refundable to the obligor for any reason, except for when the department is the obligee, the department need not pay the refund or recover the refunded amount from the obligee or from any person or agency to whom the amount was distributed.

(5) If the department distributes a support payment in error or if a distribution is made to a person, obligee, or agency not entitled to retain the distributed amount, the department may obtain restitution by means of a setoff against future payments, including arrears payments, received on behalf of the person, obligee, or agency. A setoff against future payments of current support is limited to 10% of the payment.

Section 7. Monitor payments — enforcement. The department shall monitor all IV-D cases in the case registry and payment processing unit to promptly identify failures to make timely payment of support. If payment is not timely made, the department may:

(1) determine why a timely payment was not received and take any action the department considers appropriate if there is an order to withhold income issued to a current payor;

(2) promptly transmit an income-withholding order to the obligor's payor if the obligor is not currently subject to income withholding; or

(3) promptly transmit an income-withholding order upon receipt of information identifying a payor if a payor was formerly unknown; and

(4) take any additional enforcement action the department considers appropriate in all cases with an identified delinquency.

Section 8. Certification of records. (1) Copies, including optically scanned copies, of support payment records, abstracts, and any supporting documents maintained by the case registry and payment processing unit, when certified by a designated employee of the department, must, without further proof or foundation, be admitted into evidence in any legal proceedings.

(2) Support payment records for a case maintained in the case registry and payment processing unit constitute prima facie evidence of the amount of support paid and arrearages that have accrued since the department began to process and monitor support payments through the unit.

(3) Copies of judicial orders and other documents on file with a clerk of court, when transmitted to the department by the clerk by facsimile or other electronic

means, are rebuttably presumed to be true and correct copies of the original documents and may be offered into evidence, without authentication or verification, in a department proceeding under [sections 1 through 11]. A person contesting the authenticity of the document may rebut the presumption with a certified copy of the original document.

Section 9. Directory of new hires — employer reporting requirements. (1) (a) An employer doing business in the state shall report to the department the hiring or rehiring of an employee to whom the employer anticipates paying income.

(b) An employer shall report the hiring or rehiring of an employee by submitting a copy of the employee's completed W-4 form or, at the option of the employer, its informational equivalent or any other format agreed to by the department. The report must include the employee's name, date of hire, social security number, and residential and mailing addresses, and the name, address, and federal identification number of the employer. The report may include the employee's date of birth.

(c) If an employer provides health or medical insurance coverage for an employee and the coverage may be extended to the employee's children, the employer may, along with the date the employee becomes eligible for coverage, provide that information as part of the new hire report under subsection (1)(b).

(2) Transmission of the reports must be by first-class mail, electronic or magnetic transmission, including facsimile transmission, or any other format agreed to by the department. Written reports must be submitted within 20 days of the employee's date of hire or rehire. Reports transmitted electronically or magnetically may be made by two transmissions monthly, if necessary, not less than 12 or more than 16 days apart.

(3) An employer who has employees in two or more states and who transmits new hire reports electronically or magnetically may comply with this section by designating one of the states in which there is an employee and transmitting the report of new hires to that state. A multistate employer who elects to report to only one state shall give written notice of the state to which the employer will transmit new reports. As required by 42 U.S.C. 653a(b)(1)(B), this notice must be transmitted to the secretary of the federal department of health and human services.

(4) An employer providing reports is not liable to the employee for the disclosure or any subsequent use by the processing center of the information.

Section 10. Information and records — disclosure. Information in the case registry and payment processing unit that contains the social security number, residential address, income sources, and employers of an obligee or obligor [and the employee W-4 forms or similar forms transmitted to the department] is private and confidential and may be disclosed only to:

(1) courts, tribunals, and administrative agencies in this and any agency of another state having jurisdiction over child support, custody, visitation, and welfare pursuant to 42 U.S.C. 651, et seq.;

(2) public assistance and medicaid agencies and the revenue, workers' compensation, and employment security programs of this or any other state for

the purpose of determining eligibility, continued eligibility, or fraud by programs operated by those agencies and programs;

(3) the obligor or obligee who is the subject of the information;

(4) the state vital statistics agency for the purposes of 50-15-302; and

(5) the department of revenue.

Section 11. Automated access to financial records — confidentiality — no liability — definitions. (1) For the purposes of this section, unless the context otherwise indicates, the following definitions apply:

(a) "Account" means a savings, checking, deposit and withdrawal, demand deposit, money market, profit and loss, or time deposit account opened by a depositor in a financial institution.

(b) "Depositor" means a person, share account holder, sole proprietor, or joint owner of an account in a financial institution in this state.

(c) "Financial institution" means:

(i) a depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c);

(ii) an institution-affiliated party, as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(u);

(iii) any state credit union, as defined in 32-3-102, or federal credit union, as defined in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752, including an institution-affiliated party of such a credit union, as defined in section 206(r) of the act, 12 U.S.C. 1786(r); and

(iv) any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in the state.

(d) "Obligor" means a person who owes a debt for child, spousal, or medical support as determined by the department or as specified by order of a tribunal of competent jurisdiction, the amount of which exceeds \$500 or a total of 3 months debt, whichever is less.

(2) (a) Upon written request from the department, a financial institution shall run a data match of the department's list of obligors with the financial institution's depositors and provide the information in a computer or other reasonable format accessible by the financial institution. The department may not request the information referred to in this subsection from a financial institution more than once in each calendar quarter.

(b) The information on an obligor found to be a depositor at a financial institution must include the obligor's full name, social security number or other taxpayer identification number, and account number. If normally kept by the financial institution, the information must also include the mailing address, employment address, and any other information that identifies the obligor.

(c) The financial institution shall provide the requested information within 30 days of the request from the department.

(3) The department shall run a computer match of all obligors with the information from the financial institution required in subsection (2). If there is a match between an obligor and a depositor, the financial institution shall, upon request of the department, provide additional information within 30 days, including but not limited to:

- (a) verification of the obligor's full name and social security number;
 - (b) the financial institution's account number;
 - (c) the nature of the account or accounts held by the obligor;
 - (d) the funds available in the account less any preexisting encumbrance held by the financial institution; and
 - (e) any taxes, penalties, interest, or other costs to be legally imposed on the account if the account is accessed prior to a maturity date.
- (4) The amounts available in an obligor's account do not include amounts available pursuant to overdraft coverage offered by the financial institution.
- (5) The financial institution shall honor a subsequent appropriate lien from the department sent to the financial institution.
- (6) (a) A financial institution receiving a data request, data match, or lien from the department may not provide notice to an obligor identified in the information submitted to the department. Failure to provide notice does not constitute a violation of the financial institution's duty of good faith to its customers.

(b) A notice given by a financial institution to an obligor identified by the department subjects the financial institution to the contempt authority of the department under 40-5-226.

(7) The department shall pay a financial institution a reasonable fee for providing the information required in subsection (2), not to exceed the actual documented costs incurred by the financial institution.

(8) Information requested by the department and provided by a financial institution under this section is confidential and may be used only for IV-D purposes. Use of information for any other purpose without the authorization of the department subjects the user to a civil penalty of not more than \$500 per name per use.

(9) A financial institution is not liable to a person for:

- (a) a disclosure of information to the department under this section;
- (b) encumbering or surrendering assets held by the financial institution in response to a notice of lien or levy issued by the department; or
- (c) any other action under this section taken in good faith to comply with the requirements of this section as long as the action is reasonable.

Section 12. Order to seek employment. (1) In a proceeding under this chapter to enforce a support order, if an obligor claims inability to pay support because of unemployment or underemployment, the department may order the

obligor to seek suitable employment and make progress reports on that activity to the department unless the obligor proves by a preponderance of the evidence that:

(a) the obligor is engaged in diligent, bona fide efforts to seek suitable employment; or

(b) the obligor, due to illness, injury, or other incapacity, does not have the ability to seek employment or to engage in work if employment is offered to the obligor.

(2) The seek-work order must direct the obligor to:

(a) seek employment within a specified amount of time;

(b) file a weekly report with the department showing at least five new attempts by the obligor to find employment; and

(c) include in the report filed under subsection (2)(b) the name, address, and telephone number of the employers with whom the obligor sought employment and the name of the individuals the obligor contacted to inquire about or apply for employment.

(3) The order is effective for 6 months or until the obligor finds work, whichever occurs first.

(4) Failure to report or otherwise comply with a seek-work order, absent good cause, is evidence of willful nonpayment of child support for which the obligor may be determined to have committed the offense of nonsupport under 45-5-621 or may be held in civil contempt under Title 40, chapter 5, part 6. The department may enforce the order as provided in 40-5-226.

(5) For the purpose of this section, "suitable employment" is employment commensurate with the obligor's education, training, professional or occupational qualifications, job skills, work history, and the availability of employment opportunities in the community, or in the absence of commensurate employment available within a reasonable range of the obligor's area of residence, suitable employment is any employment that the obligor is capable of performing.

Section 13. Income-withholding orders of another state — employer compliance — employer immunity — penalties for noncompliance. (1) An income-withholding order issued in another state may be sent to the person or entity defined as the obligor's employer under the income-withholding laws of this state without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

(2) (a) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor and, if the employer elects under subsection (3) to forward the funds to the department for distribution, to the department.

(b) The employer shall treat an income-withholding order issued in another state that appears regular on its face as if it had been issued by a tribunal of this state. An employer may contact the department of public health and human services to determine whether the withholding order was issued by the appropriate authority.

(3) Except as provided by subsections (4) and (5), the employer shall withhold the funds and either distribute the funds as directed in the income-withholding order or forward the funds to the department to be distributed by the department by complying with the terms of the order that specify:

(a) the duration and the amount of periodic payments of current child support, stated as a sum certain;

(b) the person or agency designated to receive payments and the address to which the payments are to be forwarded;

(c) medical support, whether in the form of periodic cash payment, stated as a sum certain, or by ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(d) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(e) the amount of periodic payments of arrears and interest on arrears, stated as sums certain.

(4) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(a) the employer's fee for processing an income-withholding order;

(b) the maximum amount permitted to be withheld from the obligor's income; and

(c) the times within which the employer must implement the income-withholding order and forward the child support payment.

(5) An obligor's employer who receives multiple income-withholding orders with respect to the earnings of the obligor satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

(6) An employer who complies with an income-withholding order issued in another state in accordance with this section is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

(7) An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

(8) (a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state in the same manner as if the order had been issued by a tribunal of this state. Choice of law under 40-5-187 applies to the contest.

(b) The obligor shall give notice of the contest to:

(i) a support enforcement agency providing services to the obligee;

(ii) each employer that has directly received an income-withholding order; and

(iii) the person or agency designated to receive payments in the income-withholding order or, if a person or agency is not designated, to the obligee.

Section 14. Execution or withholding for support obligation. (1) Benefits in the retirement systems provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income withholding for the payment of a participant's support obligation.

(2) For purposes of this section:

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in [section 13].

(c) "Participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system.

(4) The execution or income-withholding order may only provide for payment as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments under this section may be further limited only to a specified maximum time or the life of a specified participant. Payments may also be limited to a specific amount per month if the number of payments is specified.

Section 15. Execution or withholding for support obligation. (1) Benefits in the retirement system are subject to execution and income withholding for the payment of a participant's support obligation.

(2) For purposes of this section:

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in [section 13].

(c) "Participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to this chapter.

(d) "Support obligation" has the meaning provided in 40-5-403 for support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the retirement system; or

(b) an amount or duration of payment greater than that available to a participant under the retirement system.

(4) The execution or income-withholding order may only provide for payment as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments under this section may be further limited only to a specified maximum time or the life of a specified participant. Payments may also be limited to a specific amount per month if the number of payments is specified.

Section 16. Section 19-2-1004, MCA, is amended to read:

"19-2-1004. Exemption from taxes and legal process. Except as provided in 19-2-907 and [section 14], the right of a person to any benefit or payment from the retirement systems and the money in the pension trust funds is not:

(1) subject to execution, garnishment, attachment, or any other process;

(2) subject to state, county, or municipal taxes except for:

(a) a benefit or annuity received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a refund of a member's regular contributions picked up by an employer after June 30, 1985, as provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, or 19-13-601; or

(3) assignable except as specifically provided in this chapter."

Section 17. Section 19-18-612, MCA, is amended to read:

"19-18-612. Protection of benefits from legal process and taxation — nonassignability. (1) ~~Any~~ Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, payments made or to be made under this chapter are not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may not assign the right, and the association and trustees may not recognize any assignment or pay over any sum so assigned.

(2) The first \$3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation."

Section 18. Section 19-19-504, MCA, is amended to read:

"19-19-504. Protection of benefits from legal process and taxation.

(1) ~~The~~ Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, the benefits provided for in this part are not subject to execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law and are unassignable except as specifically provided in 19-19-505.

(2) The first \$3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation."

Section 19. Section 19-20-706, MCA, is amended to read:

"19-20-706. Exemption from taxation and legal process. Except as provided in 19-20-305 and [section 15], the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

(1) exempted from any state, county, or municipal tax of the state of Montana except for:

(a) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-20-602;

(2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and

(3) unassignable except as specifically provided in this chapter."

Section 20. Section 19-21-212, MCA, is amended to read:

"19-21-212. Exemption from taxation, legal process, and assessments. All *Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child*, contracts, benefits, and contributions under the optional retirement program and the earnings ~~thereon~~ *on the contributions* are:

(1) except for a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii), exempt from any state, county, or municipal tax;

(2) not subject to execution, garnishment, attachment, or other process;

(3) not covered or assessable by an insurance guaranty association; and

(4) unassignable except as specifically provided in the contracts."

Section 21. Section 25-13-608, MCA, is amended to read:

"25-13-608. Property exempt without limitation — exceptions. (1) A judgment debtor is entitled to exemption from execution of the following:

(a) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;

(b) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation, except as provided in subsection (2);

(c) veterans' benefits, except as provided in subsection (2);

(d) disability or illness benefits, *except as provided in subsection (2)*;

(e) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;

(f) maintenance and child support; and

(g) a burial plot for the judgment debtor and ~~his~~ *the debtor's* family.

(2) Veterans' and social security legislation benefits based upon remuneration for employment, as defined in 42 U.S.C. 662(f), and disability

benefits are not exempt from execution if the debt for which execution is levied is for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse if the spouse or former spouse is the custodial parent of a child for whom child support is owed or owing and the judgment debtor is the parent of the child."

Section 22. Section 37-1-307, MCA, is amended to read:

"37-1-307. Board authority. (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint, issued by a majority vote of board members not serving on the screening panel described in subsection (1)(e), and signed by the presiding officer of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) compel attendance of witnesses and the production of documents. Subpoenas may be enforced as provided in 2-4-104.

(e) establish a screening panel that determines whether there is reasonable cause to believe that a licensee has violated a statute or rule justifying disciplinary proceedings. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(f) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding its licensees and license applicants.

(3) *Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act."*

Section 23. Section 40-1-107, MCA, is amended to read:

"40-1-107. Form of application, license, marriage certificate, and consent. (1) The director of the department of public health and human services shall prescribe the form for an application for a marriage license, which must include the following information:

(a) name, sex, address, *social security number*, and date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, the party's name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of public health and human services shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

(3) *The license, certificate, or consent may not contain the social security number, and the department shall keep the number from this source confidential, except that the department may use the number in administering Title IV-D of the Social Security Act.*

Section 24. Section 40-4-105, MCA, is amended to read:

"40-4-105. Procedure — commencement — pleadings — abolition of existing defenses. (1) The verified petition in a proceeding for dissolution of marriage or legal separation ~~shall~~ *must* allege that the marriage is irretrievably broken and ~~shall~~ *must* set forth:

(a) the age, occupation, and residence of each party and ~~his~~ *the party's* length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding the commencement of this proceeding; or

(ii) there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and

may within 20 days after the date of service file a verified response. ~~No~~ A decree may not be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

(6) *The social security number, if known, of a person subject to a decree of dissolution or a support order must be recorded in the records relating to the matter. The recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.*

Section 25. Section 40-4-204, MCA, is amended to read:

"40-4-204. Child support — orders to address health insurance — withholding of child support. (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the custodial parent;

(c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and the child's educational and medical needs;

(e) the financial resources and needs of the noncustodial parent;

(f) the age of the child;

(g) the cost of day care for the child;

(h) any custody arrangement that is ordered or decided upon; and

(i) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the

guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(d) *Child support obligations established under this section are subject to the registration and processing provisions of [sections 1 through 11].*

(4) Each temporary or final district court judgment, decree, or order establishing a child support obligation under this title and each modification of a final order for child support must include a medical support order as provided for in Title 40, chapter 5, part 8.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's monthly support obligation if the excess support is a result of annualized withholding.

(d) *If an obligor is exempted from paying support through income withholding, the support order must include a requirement that whenever the case is receiving services under Title IV-D of the Social Security Act, support payments must be*

paid through the department of public health and human services as provided in [section 5].

~~(6) (a) For the purposes of income withholding under subsection (5), each~~ Each district court judgment, decree, or order that establishes paternity or establishes or modifies a child support obligation must include a provision requiring the ~~parent obligated to pay support to inform parties to promptly file~~ with the court and, ~~if the department of public health and human services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following to update, as necessary, information on:~~

(i) the party's identity, residential and mailing addresses, telephone number, [social security number,] and driver's license number;

~~(a)(ii) the name, and address, and telephone number of the parent's current~~ party's employer; and

~~(b) whether the parent has access to health insurance through an employer or other group; and~~

~~(c) if insurance coverage is available, the health insurance policy information.~~

(iii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the names of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the party's employer.

(b) The court shall keep the information provided under subsection (6)(a) confidential except that the information may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.

(c) The order must also require that in any subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or the department of public health and human services, if the department is providing services under Title IV-D of the Social Security Act, may consider due process requirements for notice and service of process met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the court.

(7) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of public health and human services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

(8) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support obligation to be paid, *without need for further order of the court, to:*

- (i) the legal custodian of the minor child;
- (ii) ~~(A) any other to a person, organization, or agency having legal to which the legal custodian voluntarily or involuntarily relinquished physical custody of the minor child under a legal assignment of rights; or~~
(B) the court for the benefit of the minor child;
- (iii) any other person, organization, or agency designated as caretaker of the minor child by agreement of the legal custodian entitled by law, assignment, or similar reason to receive or collect the child support obligation; ~~or~~
- (iv) ~~any assignee or other person, organization, or agency authorized to receive or collect child support.~~

(b) When the department of public health and human services is providing services under Title IV-D of the Social Security Act, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment.

~~(b)(c)~~ A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court.

(9) A judgment, decree, or order that establishes or modifies a child support obligation must include a provision that if a parent or guardian is the obligee under a child support order and is obligated to pay a contribution for the same child under 41-3-406, 41-5-403, or 41-5-523, the parent or guardian assigns and transfers to the department of public health and human services all rights that the parent or guardian may have to child support that are not otherwise assigned under 53-2-613."

Section 26. Section 40-4-206, MCA, is amended to read:

"40-4-206. Payment of maintenance or support to court — handling fee of clerk. (1) ~~Upon~~ Except as provided in subsection (4), upon its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the clerk of the district court as trustee for remittance to the person entitled to receive the payments.

(2) The clerk of the district court shall maintain records of payments received by the clerk listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order. The clerk may charge the payor a handling fee of \$2 a payment, which must be in addition to the payment. Any handling fee collected by the clerk under this subsection must be paid into the county general fund unless the county has a district court fund. If the county has a district court fund, the amount must be paid into such that fund.

(3) The parties affected by the order shall inform the clerk of the district court of any change of address or of other condition that may affect the administration of the order.

(4) When the department of public health and human services is providing services under Title IV-D of the Social Security Act or when income withholding

is in effect in an order issued or modified after October 1, 1998, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment."

Section 27. Section 40-5-103, MCA, is amended to read:

"40-5-103. Definitions. (1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a child support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support":

(a) means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse; and

(b) includes an unsatisfied obligation to provide support.

(4) "Governor" includes an individual performing the functions of governor or the executive authority of any state covered by this part.

(5) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the state in which the child lived from birth with a parent or person acting as parent. A period of temporary absence of a parent or person acting as parent is counted as part of the 6-month or other period.

(6) "Income" includes:

(a) earnings or other periodic entitlements to money from any source; and

(b) any other property subject to withholding for support under the law of this state.

(7) "Income-withholding order" means an order or other legal process directed to an obligor's employer, as provided in Title 40, chapter 5, parts 3 and 4, or by a tribunal of another state to withhold support from the income of the obligor.

(8) "Initiating state" means a state ~~in~~ from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state pursuant to this part or a law or procedure substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or a law or procedure substantially similar to either of those acts; or pursuant to a proceeding initiated by the department of public health and human services under 40-5-263 is filed for forwarding to a responding state.

(9) "Initiating tribunal" means the authorized tribunal in an initiating state.

(10) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(11) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(12) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(13) "Obligee" means:

(a) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(b) a state or political subdivision to which the rights under a duty of support or a support order have been assigned or that has independent claims based on financial assistance provided to an individual obligee; or

(c) an individual seeking a judgment determining parentage of that individual's child.

(14) "Obligor" means an individual or the estate of a decedent:

(a) who owes or is alleged to owe a duty of support;

(b) who is alleged but has not been adjudicated to be a parent of a child; or

(c) who is liable under a support order.

(15) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(16) "Register" means to file a support order or judgment determining parentage in the registry of foreign support orders.

(17) "Registering tribunal" means a tribunal in which a support order is registered.

(18) "Responding state" means a state ~~to~~ in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this part or a law or procedure substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or a law or procedure substantially similar to either of those acts, or under a proceeding initiated by the department of public health and human services under 40-5-263.

(19) "Responding tribunal" means the authorized tribunal in a responding state.

(20) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

(21) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes an Indian tribe and includes a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this part, the Uniform

Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(22) (a) "Support enforcement agency" means a public official or agency authorized to seek:

(i) enforcement of support orders or laws relating to the duty of support;

(ii) establishment or modification of child support;

(iii) a determination of parentage; or

(iv) to locate obligors or their assets.

(b) Support enforcement agency includes:

(i) in cases brought under ~~title~~ Title IV-D of the Social Security Act, the department of public health and human services; and

(ii) in all other cases, the prosecuting attorney.

(23) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, that:

(a) is for the benefit of a child, a spouse or a former spouse, or a state or political subdivision;

(b) provides for monetary support, health care, arrearages, or reimbursement; and

(c) may include related costs and fees, interest, income withholding, attorney fees, and other relief.

(24) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage."

Section 28. Section 40-5-149, MCA, is amended to read:

"40-5-149. Continuing, exclusive jurisdiction. (1) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:

(a) as long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(b) until ~~each individual party has~~ all of the parties who are individuals have filed written consent with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(2) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to *this part* or a law substantially similar to this part.

(3) If a child support order of this state is modified by a tribunal of another state pursuant to *this part* or a law substantially similar to this part, a tribunal

of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state and may only:

(a) enforce the order that was modified as to amounts accruing before the modification;

(b) enforce nonmodifiable aspects of that order; and

(c) provide other appropriate relief for violations of that order that occurred before the effective date of the modification.

(4) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state that has issued a child support order pursuant to *this part* or a law substantially similar to this part.

(5) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(6) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state."

Section 29. Section 40-5-151, MCA, is amended to read:

"40-5-151. Recognition of child support orders. (1) *If a proceeding is brought under this part and only one tribunal has issued a child support order, the order of that tribunal controls and must be recognized.*

(1)(2) If a proceeding is brought under this part and ~~one~~ two or more child support orders have been issued ~~in by tribunals of this state or another state with regard to an the same obligor and a child,~~ a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(a) ~~If only one tribunal has issued a child support order, the order of that tribunal must be recognized.~~

(b)(a) If ~~two or more tribunals have issued child support orders for the same obligor and child and~~ only one of the tribunals would have continuing, exclusive jurisdiction under this part, the order of that tribunal *controls and must be recognized.*

(c)(b) If ~~two or more tribunals have issued child support orders for the same obligor and child and~~ more than one of the tribunals would have continuing, exclusive jurisdiction under this part, an order issued by a tribunal in the current home state of the child *controls and must be recognized.* However, if an order has not been issued in the current home state of the child, the order most recently issued *controls and must be recognized.*

(d)(c) If ~~two or more tribunals have issued child support orders for the same obligor and child and~~ none of the tribunals would have continuing, exclusive jurisdiction under this part, the tribunal of this state ~~may~~ *having jurisdiction*

over the parties shall issue a child support order, which controls and must be recognized.

(3) *If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this state, a party may request a tribunal of this state to determine which order controls and must be recognized under subsection (2). The request must be accompanied by a certified copy of each support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.*

(2)(4) The tribunal that ~~has issued an the controlling order recognized under subsection~~ subsections (1) through (3) is the tribunal ~~having that~~ *has continuing, exclusive jurisdiction under 40-5-149.*

(5) *A tribunal of this state that determines, by order, the identity of the controlling order under subsection (2)(a) or (2)(b) or that issues a new controlling child support order under subsection (2)(c) shall state in that order the basis upon which the tribunal made its determination.*

(6) *Within 30 days after issuance of the order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order."*

Section 30. Section 40-5-161, MCA, is amended to read:

"40-5-161. Duties of initiating tribunal. (1) Upon the filing of a petition authorized by this part, an initiating tribunal shall forward three copies of the petition and its accompanying documents:

(a) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(b) if the identity of the responding tribunal is unknown, to the state information agency of the responding state, with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(2) The department of public health and human services is the initiating tribunal for any action or proceeding that may be brought under Title 40, chapter 5, parts 2, 4, and 5. In all other cases, the district court is the initiating tribunal.

(3) *If a responding state has not enacted the Uniform Interstate Family Support Act or another law or procedure substantially similar to that act, a tribunal of this state may issue a certificate or other documents and make findings required by the law or procedure of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state."*

Section 31. Section 40-5-162, MCA, is amended to read:

"40-5-162. Duties and powers of responding tribunal. (1) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to 40-5-158(4), it shall cause the

petition or pleading to be filed and notify the petitioner ~~by first-class mail~~ where and when it was filed.

(2) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:

(a) issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

(b) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(c) order income withholding;

(d) determine the amount of any arrearages and specify a method of payment;

(e) enforce orders by use of civil or criminal contempt, or both;

(f) set aside property for satisfaction of the support order;

(g) place liens and order execution on the obligor's property;

(h) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(i) issue a bench warrant for an obligor who has failed, after proper notice, to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(j) order the obligor to seek appropriate employment by specified methods;

(k) award reasonable attorney fees and other fees and costs; and

(l) grant any other available remedy.

(3) A responding tribunal of this state shall include in a support order issued under this part or in the documents accompanying the order the calculations on which the support order is based.

(4) A responding tribunal of this state may not condition the payment of a support order issued under this part upon a party's compliance with visitation provisions.

(5) If a responding tribunal of this state issues an order under this part, the tribunal shall send a copy of the order ~~by first-class mail~~ to the petitioner and the respondent and to the initiating tribunal, if any.

(6) The department of public health and human services is the responding tribunal for receipt of a petition or comparable proceedings from an initiating state as provided in 40-5-263. In all other cases, the district court is the responding tribunal."

Section 32. Section 40-5-163, MCA, is amended to read:

"40-5-163. Inappropriate tribunal. If a petition or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the pleading

and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner ~~by first-class mail~~ where and when the pleading was sent."

Section 33. Section 40-5-164, MCA, is amended to read:

"40-5-164. Duties of support enforcement agency. (1) A support enforcement agency of this state, upon application, shall provide services to a petitioner in a proceeding under this part.

(2) A support enforcement agency that is providing services to the petitioner shall, as appropriate:

(a) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(b) request an appropriate tribunal to set a date, time, and place for a hearing;

(c) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(d) after receipt of a written notice from an initiating, responding, or registering tribunal, promptly send a copy of the notice ~~by first-class mail~~ to the petitioner;

(e) after receipt of a written communication from the respondent or the respondent's attorney, promptly send a copy of the communication ~~by first-class mail~~ to the petitioner; and

(f) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(3) This part does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

(4) For purposes of this part, the department of public health and human services is the support enforcement agency for this state as provided in Title 40, chapter 5, parts 2, 4, and 5. All the provisions of this part must be interpreted as supplemental to and cumulative with the department's powers and duties under those provisions. In all other cases, the county attorney in the county in which an action must be filed is the support enforcement agency."

Section 34. Section 40-5-173, MCA, is amended to read:

"40-5-173. Costs and fees. (1) The petitioner may not be required to pay a filing fee or other costs to initiate a proceeding under this part.

(2) If an obligee prevails, a responding tribunal may assess against an obligor the filing fees, reasonable attorney fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. Except as provided by other law, the tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state. Attorney fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the

attorney's own name. Payment of current support owed to the obligee has priority over fees, costs, and expenses.

(3) The tribunal shall order the payment of costs and reasonable attorney fees if it determines that a hearing was requested primarily for delay. In a proceeding under ~~40-5-184 through 40-5-195 or 40-5-271~~ 40-5-184 through 40-5-195, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

(4) The standardized schedule of fees established by the department of public health and human services under 40-5-210 is conclusive in any action under this section. Any fees or costs recoverable under subsection (2) that are not included in the standardized schedules are recoverable under subsection (2)."

Section 35. Section 40-5-188, MCA, is amended to read:

"40-5-188. Notice of registration of order. (1) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. ~~Notice must be given by first class or certified mail or by any means of personal service authorized by the law of this state.~~ The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(2) The notice must inform the nonregistering party:

(a) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(b) that a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after ~~the date of mailing or personal service of the~~ the date of mailing or personal service of the notice;

(c) that failure to contest the validity or enforcement of the registered order in a timely manner:

(i) will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(ii) precludes further contest of that order with respect to any matter that could have been asserted; and

(d) of the amount of any alleged arrearages.

(3) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to ~~Title 40, chapter 5, part 4~~ the income-withholding laws of this state."

Section 36. Section 40-5-189, MCA, is amended to read:

"40-5-189. Procedure to contest validity or enforcement of registered order. (1) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within 20 days after the date of mailing or personal service of notice of the registration. The nonregistering party may, pursuant to 40-5-190, seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages.

(2) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(3) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties ~~by first class mail~~ of the date, time, and place of the hearing."

Section 37. Section 40-5-194, MCA, is amended to read:

"40-5-194. Modification of child support order of another state. (1) After a child support order issued in another state has been registered in this state, the ~~appropriate~~ responding tribunal of this state may modify that order only if subsection (5) does not apply, and, after notice and hearing, it finds that:

(a) the following requirements are met:

(i) the child, the individual obligee, and the obligor do not reside in the issuing state;

(ii) a petitioner who is a nonresident of this state seeks modification; and

(iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(b) ~~an individual party or the child or a party who is an individual~~ is subject to the personal jurisdiction of the tribunal of this state and all of the individual parties who are individuals have filed in the issuing tribunal a written consent providing that the appropriate consents in the issuing tribunal for a tribunal of this state may to modify the support order and that this state may assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this part, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.

(2) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state, and the order may be enforced and satisfied in the same manner.

(3) A tribunal of this state may not modify only any aspect of a child support order that may not be modified under the laws of the issuing state. ~~A tribunal may not modify provisions, such as custody, visitation, or other provisions not related to support.~~ If two or more tribunals have issued child support orders for the same obligor and child, the order that controls and must be recognized under 40-5-151 establishes the aspects of the support order that are nonmodifiable.

(4) On issuance of an order modifying a child support order issued in another state, a tribunal of this state has continuing, exclusive jurisdiction.

(5) (a) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and modify the issuing state's child support order in a proceeding to register that order.

(b) *A tribunal of this state exercising jurisdiction under subsection (5)(a) shall apply the provisions of 40-5-103, 40-5-143 through 40-5-152, 40-5-181, and 40-5-184 through 40-5-195 to the enforcement or modification proceeding. The remaining sections of this part do not apply.*

(5)(6) Within 30 days after issuance of a modified child support order, the ~~tribunal-issuing party~~ obtaining the modification shall file a certified copy of the order:

(a) with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order; and

(b) in each tribunal in which the ~~modifying tribunal~~ party knows that the earlier order has been registered.

(7) *A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal of continuing, exclusive jurisdiction.*

Section 38. Section 40-5-195, MCA, is amended to read:

"40-5-195. Recognition of order modified in another state. A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state that assumed jurisdiction pursuant to *this part* or a law substantially similar to this part. Except as otherwise provided in this part, the tribunal of this state shall, upon request:

(1) enforce the order that was modified only as to amounts accruing before the modification;

(2) enforce only nonmodifiable aspects of that order;

(3) provide other appropriate relief only for violations of the order that occurred before the effective date of the modification; and

(4) recognize the modifying order of the other state, upon registration, for the purpose of enforcement."

Section 39. Section 40-5-196, MCA, is amended to read:

"40-5-196. Proceeding to determine parentage. (1) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this part or a law or procedure substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, ~~or~~ the Revised Uniform Reciprocal Enforcement of Support Act, or a law or procedure substantially similar to either of those acts to determine whether the petitioner is a parent of a particular child or to determine whether a respondent is a parent of that child.

(2) In a proceeding to determine parentage, a responding tribunal of this state shall apply the rules of this state on choice of law.

(3) A proceeding to determine parentage directed to:

(a) the department of public health and human services from an initiating state pursuant to 40-5-263 and this part is subject to the provisions of 40-5-231 through 40-5-237 or Title 40, chapter 6, part 1, as applicable; and

(b) a district court from an initiating state is subject to the provisions of Title 40, chapter 6, part 1."

Section 40. Section 40-5-201, MCA, is amended to read:

"40-5-201. Definitions. As used in this part, the following definitions apply:

(1) "Alleged father" means a person who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a person who is presumed to be a child's father under the provisions of 40-6-105.

(2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; any person under 19 years of age and still in high school; or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday and for whom:

(i) support rights are assigned under 53-2-613;

(ii) a public assistance payment has been made;

(iii) the department is providing support enforcement services under 40-5-203; or

(iv) the department has received a referral for interstate services from an agency of another state under the provisions of *the Uniform Reciprocal Enforcement of Support Act*, *the Revised Uniform Reciprocal Enforcement of Support Act*, *the Uniform Interstate Family Support Act*, or ~~under~~ Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of public health and human services.

(4) "Director" means the director of the department of public health and human services or the director's authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

(6) "Hearings officer" or "hearing examiner" means the hearings officer appointed by the department for the purposes of this chapter.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

(8) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. *The genetic markers may be identified from a person's blood or tissue sample. The blood or tissue sample may be taken by blood drawing, buccal swab, or any other method approved by the American association of blood banks.* Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide for the medical, health, and support needs of a child under the laws of this or any other state or under a support order; or

(b) a support order for spousal maintenance ~~if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is of the custodial parent.~~

(14) "Support order" means an order, whether temporary or final, that:

(a) provides for the payment of a specific amount of money, expressed in periodic increments or as a lump-sum amount, for the support of the child, including an amount expressed in dollars for medical and health needs, child care, education, recreation, clothing, transportation, and other related expenses and costs specific to the needs of the child; and

(b) is issued by:

(i) a district court of this state;

(ii) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

(iii) an administrative agency pursuant to proceedings under this part; or

(iv) an administrative agency of another state, Indian tribe, or foreign country with a hearing function and process similar to those of the department under this part.

(15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated under the act."

Section 41. Section 40-5-203, MCA, is amended to read:

"40-5-203. Child support enforcement services. (1) The department may accept applications for child support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against persons owing a duty to pay support.

(2) The department may establish by rule the terms and conditions by which services are provided under this section.

(3) If child support enforcement services are provided under this part to or for a child as a result of the payment of public assistance, the department ~~may~~ shall continue to provide services after public assistance is no longer being paid, subject to the same conditions and on the same basis as in the case of other individuals to whom services are furnished under this section, without requiring an application, application fee, or other request for services. ~~An obligee's acceptance~~ Acceptance of continued services constitutes the obligee's agreement to the terms and conditions set for applicants by the department under this section.

(4) *Services under this section, including information requests, are available to obligors, obligees, and residents of other states on the same terms as residents of this state.*

~~(4)~~(5) The department may terminate services under this section if it:

(a) receives a written request ~~from the obligee~~ for termination of services from the person to whom services are being provided;

(b) receives notice that the child is receiving public assistance; or

(c) determines that ~~an obligee~~ the person receiving services has violated any term or condition set by the department for an applicant under this section.

(6) *For purposes of credit rating reports by the department, the department shall indicate if the withholding is for delinquent support or for regular monthly support obligations."*

Section 42. Section 40-5-206, MCA, is amended to read:

"40-5-206. Central unit for information and administration — cooperation enjoined — availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, for receiving and answering requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise departmental activities in relation to deserting parents, and to ensure effective cooperation with law enforcement agencies.

(2) ~~If services are provided to a child under this part, the~~ During or in anticipation of a delinquency, enforcement, or modification proceeding, a proceeding to establish child or medical support or paternity, an attempt to locate

an obligor, or a contested case, the department or other IV-D agency may request and, notwithstanding any statute making the information confidential, all state, county, and city agencies, officers, and employees shall provide on request information, if known, concerning an obligor or obligee, including:

- (a) name;
- (b) residential and mailing addresses;
- (c) date of birth;
- ~~(d) social security number;~~
- (d) social security number;
- ~~(e)(e)~~ wages or other income;
- ~~(f)(f)~~ number of dependents claimed for state and federal income tax withholding purposes;
- ~~(g)(g)~~ name and address of employer;
- (h) state and local tax and revenue records;
- (i) penal corrections records;
- ~~(h)(j)~~ address, location, and description of any real property or titled personal property; and
- ~~(i)(k)~~ any other asset in which the obligor or obligee may have an interest, including its location and the extent, nature, and value of the interest.

(3) Upon service of an administrative subpoena from the department or another IV-D agency during or in anticipation of a delinquency, enforcement, or modification proceeding, a proceeding to establish child or medical support or paternity, an attempt to locate an obligor, or a contested case, public utilities, cable television companies, and financial institutions shall, with regard to an obligor or obligee, provide the department or the requesting IV-D agency with the name and address of the obligor or obligee, the name and address of the obligor's or obligee's employer, and any information on the obligor's or obligee's assets and liabilities contained in customer records.

~~(3)(4)~~ Any information obtained by the department during the course of a child support investigation that is confidential at the source must be treated by the department as confidential and must be safeguarded accordingly. ~~The Absent a specific statutory prohibition to the contrary and subject to subsection (6), the~~ department may release information obtained from nonconfidential public and private sources, including information regarding support orders, judgments, and payment records.

~~(4)(5)~~ Use Absent a specific statutory prohibition or rule to the contrary and subject to subsection (6), use or disclosure of information obtained by the department from confidential sources ~~of and~~ or any information maintained by the department in its records, including the names, addresses, and social security numbers of obligors and obligees, is limited to:

- (a) purposes directly related to the provision of services under this chapter;

(b) county attorneys and courts having jurisdiction in support and abandonment proceedings and agencies in other states engaged in the enforcement of support of minor children under the federal Social Security Act; and

- (c) any other use permitted or required by the federal Social Security Act.

(6) The department may not disclose information regarding the whereabouts of a party to another party if:

(a) the department received notice that a protective order with respect to the party has been entered against the other party; or

(b) the department has reason to believe that the release of information may result in physical or emotional harm to the party.

(7) A person [, public entity,] or private entity that discloses information to the department in compliance with this section is not liable to the obligor or obligee for negligent disclosure.

(8) An entity failing to comply with this section is subject to the contempt authority of the department under 40-5-226."

Section 43. Section 40-5-210, MCA, is amended to read:

"40-5-210. Standardized fee schedule — rules. (1) The department may charge an application fee to each person applying for services under 40-5-203, except that the fee may not be charged to persons who receive continuing services under 40-5-203(3). The application fee may be:

- (a) a flat dollar amount; or

(b) an amount based on a sliding fee schedule that is based on the applicant's income level.

(2) If paternity is established or presumed under 40-5-234 for the alleged father, the fees for paternity blood testing may be recovered from the parent, whether the alleged father or the mother, denying paternity of the alleged father. The total amount of the paternity blood testing fee may not exceed the actual costs of the paternity blood tests. *A bill for a paternity blood test is admissible in evidence without third-party foundation testimony.*

(3) The department may charge a handling fee for each payment of support collected on behalf of any obligee who is not a recipient of public assistance. The department may withhold the fee from the support payment before distribution to the obligee.

(4) The department may charge an obligor a late payment fee for each late payment of support collected on behalf of any obligee.

(5) The department may establish a fee schedule in order to recover costs and expenses in excess of the application, handling, and late fees. The fees must be commensurate with costs or an average of the expenditures related to specific or routine activities.

(a) The department shall develop procedures for determining whether it is appropriate for either the obligor or the obligee to be responsible for payment of the fee. In developing the procedures, the department shall consider federal regulations promulgated under Title IV-D of the Social Security Act.

(b) In an action to establish paternity or to establish or enforce a child support obligation, whether in district court or by administrative process, the department must be awarded costs in the amount established in the fee schedule as part of any judgment, decree, or order whenever the department:

(i) is a prevailing party in the action; or

(ii) is not a party but incurs expenses and costs related to the action.

(6) The department may collect the fees awarded under this section by one of the following means:

(a) if the fee is owed by an obligor, the fee may be:

(i) collected through any remedy available to the department for the collection of child support arrearages; or

(ii) deducted from any payments made by the obligor before the payment is distributed to the obligee. Credit for the payment must be reduced by the amount of the deduction for the fee. The deduction for fees may not reduce any current support due to the obligee. The deduction for a late payment fee may not reduce any current or past-due support due to the obligee.

(b) if the fee is owed by the obligee, the fee may be collected separately through any remedy available to the department for the collection of child support or the department may withhold the fee amount out of any payment collected on behalf of the obligee. The obligor must receive full credit for the payment as if the withholding of fees did not occur.

(7) The department, upon a showing of necessity, may waive or defer any fee assessed under this section.

(8) The department may adopt rules necessary to implement fee schedules under this section.

(9) The fees and costs charged and collected under this section must be paid monthly into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected."

Section 44. Section 40-5-225, MCA, is amended to read:

"40-5-225. Notice of financial responsibility — temporary and final support obligations — administrative procedure. (1) (a) ~~In the absence of a support order, the department may serve an obligor with a notice of financial responsibility alleging a child's need for support and the amount of the need and requiring the obligor to appear and show cause at a hearing held by the department why the obligor should not be finally ordered to pay the amount alleged in the notice.~~

~~(b) The notice must state:~~

~~(i) the names of the obligee and child;~~

~~(ii) the amount of current and future support to be paid each month for the child;~~

~~(iii) that if the obligor does not file a written answer within 20 days from the date of service or refusal of service, the amount in the notice must be finally ordered;~~

~~(iv) that the obligor is entitled to a fair hearing under 40-5-226.~~

~~(2) If, prior to the service of the notice under this section, the department has information concerning the obligor's financial condition, the department's allegation of the obligor's monthly support responsibility must be based on the scale of suggested minimum contributions under 40-5-214. If such information is unknown to the department, the allegations of the obligor's monthly support responsibility must be based on the greater of:~~

~~(a) the amount of public assistance payable under Title 53, chapter 4; or~~

~~(b) the alleged need.~~

~~(3) If the obligor objects to the notice, the obligor shall file a written answer with the department within 20 days from the date of service or refusal of service. If the department receives a timely answer, it shall conduct a fair hearing under 40-5-226. If the department does not receive a timely answer, it shall order the obligor to pay the amount stated in the notice.~~

~~(1) In the absence of an existing support order, when the requirements of this section are met, the department may enter an order requiring a child's parent or parents to pay an amount each month for the support of the child. The support order must include a medical support order as required by 40-5-208.~~

~~(2) An action to establish a support order must be commenced by serving a notice of financial responsibility on the parent or parents. The notice must include a statement:~~

~~(a) of the names of the child, the obligee, and if different than the obligee, the child's guardian or caretaker relative;~~

~~(b) of the dollar amount of the support obligation to be paid each month for the child;~~

~~(c) that in addition to child support, the parent or parents may be ordered to provide for the child's medical support needs;~~

~~(d) that any party may request a hearing to contest the amount of child support shown in the notice or to contest the establishment of a medical support order;~~

~~(e) that if a party does not timely file a request for hearing, support, including medical support, will be ordered as declared in the notice or in accordance with the child support guidelines adopted under 40-5-209;~~

~~(f) that if a party does request a hearing, the other parties may refuse to participate in the proceedings, however, the child support and medical support~~

order will be determined using the information available to the department or provided at the hearing;

(g) that a party's refusal to participate is a consent to entry of a child support and medical support order consistent with the department's determination; and

(h) that the parties are entitled to a fair hearing under 40-5-226.

~~(4)(a)(3) If a support action is pending in district court and a temporary or permanent support obligation has not been ordered or if a paternity action is pending and there is clear and convincing evidence of paternity based on paternity blood tests or other evidence, the department may issue to the obligor a notice of temporary support obligation enter an order requiring a child's parent or parents to pay an amount each month for the temporary support of the child pending entry of a support order by the district court. The temporary support order must include a medical support order as required by 40-5-208.~~

~~(b) The notice must contain:~~

~~(i) the names of the child and the person or agency having the custodial care of the child;~~

~~(ii) an amount for temporary monthly support determined as provided in subsection (2);~~

~~(iii) a statement that the obligor may request a hearing at which the obligor may show that a different support amount is appropriate or that establishment of a support obligation is inappropriate under the circumstances. The hearing must be conducted in accordance with the procedures of 40-5-226.~~

~~(iv) a statement that a hearing must be requested in writing within 10 days of receipt of the notice or the order for a temporary support order will be entered in the amount stated in the notice; and~~

~~(v) a statement that the temporary support order will terminate upon the entry of a district court support order. If the district court order is retroactive, any amount paid for a particular period under the temporary support order must be credited against the amounts due under the district court order for the same period, but excess amounts may not be refunded. If the district court determines that a periodic support obligation is not proper, any amount paid under the temporary support order must be refunded to the obligor.~~

(4) An action to establish a temporary support order must be commenced by serving a notice of temporary support obligation on the parent or parents. In addition to the statements required in subsection (2), the notice must include a statement that:

(a) a party may request a hearing to show that a temporary support obligation is inappropriate under the circumstances; and

(b) the temporary support order will terminate upon the entry of a final support order or an order of nonpaternity. If the final order is retroactive, any amount paid for a particular period under the temporary support order must be credited against the amounts due under the final order for the same period, but excess amounts may not be refunded. If an order of nonpaternity is issued or if the final support order states that periodic support obligation is not proper, the obligee shall

refund to the obligor any improper amounts paid under the temporary support order, plus any costs the obligee incurs in recovering the amount to be refunded.

(5) (a) If a temporary support order is entered or if proceedings are commenced under this section for a married obligor, the department shall vacate any support order or dismiss any proceeding under this part if it finds that the parties to the marriage have:

(i) reconciled without the marriage having been dissolved;

(ii) made joint application to the department to vacate the order or dismiss the proceeding; and

(iii) provided proof that the marriage has been resumed.

(b) The department may not vacate a support order or dismiss a proceeding under this subsection (5) if it determines that the rights of a third person or the child are affected. The department may issue a new notice of temporary support obligation under this section if the parties subsequently separate.

(6) ~~Any~~ A notice of financial responsibility and the notice of temporary support obligation ~~must~~ may be served by certified mail or in the same manner prescribed for the service of a summons in civil action in accordance with the Montana Rules of Civil Procedure.

(7) If prior to service of a notice under this section, the department has sufficient financial information, the department's allegation of the obligor's monthly support responsibility, whether temporary or final, must be based on the child support guidelines established under 40-5-214. If the information is unknown to the department, the allegations of the parent's or parents' monthly support responsibility must be based on the greater of:

(a) the maximum amount of public assistance that could be payable to the child under Title 53 if the child were otherwise eligible for assistance; or

(b) the child's actual need as alleged by the custodial parent, guardian, or caretaker of the child.

(8) (a) A party who objects to a notice of financial responsibility or notice of temporary support obligation may file a written request for hearing with the department:

(i) within 20 days from the date of service of a notice of financial responsibility; and

(ii) within 10 days from the date of service of a notice of temporary support obligation.

(b) If the department receives a timely request for a hearing, it shall conduct one under 40-5-226.

(c) If the department does not receive a timely request for a hearing, it shall order the parent or parents to pay child support and to provide for the child's medical needs as stated in the notice. The child support obligation must be the amount stated in the notice or determined in accordance with the child support guidelines adopted under 40-5-209.

(9) A child support and medical support order under subsection (1) continues until the child attains 18 years of age or the child's graduation from high school, whichever occurs later, but not later than the child's 19th birthday, unless the child is sooner emancipated by court order. A temporary support obligation established under subsection (3) continues until terminated as provided in subsection (5) or until the temporary order is superseded by a final order, judgment, or decree."

Section 45. Section 40-5-226, MCA, is amended to read:

"40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of final decision and order.

(1) The administrative hearing is defined as a "contested case".

(2) If a hearing is requested, it must be scheduled within 20 days initially be by teleconference methods and is subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the hearings officer shall grant a de novo in-person hearing.

(3) The hearings officer shall determine the liability and responsibility, if any, of the obligor parent or parents under the notice and shall enter a final decision and order in accordance with the determination. The order may award support from the date of:

(a) the child's birth if paternity was established under 40-5-231 through 40-5-238 or under Title 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

(b) the parties' separation if support is initially established under 40-5-225;

(c) notice to the parties of a support modification request under 40-5-273.

(4) (a) ~~If Except as provided in subsection (4)(b), if the obligor fails~~ parent or parents fail to appear at the hearing or fails to timely file a request for a hearing, the hearings officer, upon a showing of valid service, shall enter a default decision and order declaring the amount stated in the notice to be final.

(b) ~~In a multiple party proceeding under 40-5-225, if one party files a timely request for hearing, the matter must be set for hearing. Notice of the hearing must be served on the parties. If a party refuses to appear for the hearing or participate in the proceedings, the hearing officer shall determine child support and medical support orders based on the notice, information available to the department, and evidence provided at the hearing by the appearing parties. A party's refusal to appear is a consent to entry of child and medical support orders consistent with the hearing officer's determination. However, the default order may not be for more than the support requested in the notice unless the hearings officer finds that the evidence requires a larger amount.~~

(5) In a hearing to determine financial responsibility, whether temporary or final, and in any proceeding to modify support under 40-5-273, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the uniform child support guidelines adopted by the department under 40-5-209. The hearings officer is not limited to the

amounts stated in the notice. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the order is entered upon the parties' consent. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the hearings officer finds by clear and convincing evidence that the application of the guidelines is unjust to the child or to any of the parties or is inappropriate in a particular case. If the hearings officer finds that the guideline amount is unjust or inappropriate in a particular case, the hearings officer shall state the reasons for finding that the application of the guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar findings must also be made in a case in which the parties have agreed to a support amount that varies from the guideline amount. The hearings officer may vary the application of the guidelines to limit the obligor's liability for past support to the proportion of expenses already incurred that the hearings officer considers just. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(6) ~~In a hearing to enforce a support order or to establish paternity under this chapter, the department shall send a copy of the notice of hearing to the obligee by regular mail addressed to the obligee's last-known address. The obligee may attend and observe the hearing as a nonparty. This subsection does not limit participation of an obligee who is a party to the proceedings or who is called as a witness to testify.~~

~~(6)(7) (a) Within 20 days of the hearing, the~~ Within 60 days after the hearing has been concluded, any post-hearing briefs are received, and all the evidence submitted, except for good cause, the hearings officer shall enter a final decision and order. The determination of the hearings officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act. A copy of the final decision must be delivered or mailed to each party, each party's attorney, and the obligee if the obligee is not a party.

(b) A child support obligation established under this section is subject to the registration and processing provisions of [sections 1 through 11].

~~(7)(8)~~ A support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D for the enforcement of the order.

(8)(9) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearings officer.

~~(9)(10)~~ A child support debt or a support responsibility obligation determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearings officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure. When issuing a support order, the department shall consider whether any of the exceptions to immediate income withholding found at 40-5-411 apply, and, if an

exception is applicable, the department shall include the exception in the support order.

~~(10)(11)~~ (a) Unless the hearings officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, each order establishing a child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearings officer.

(b) *If an obligor is excepted from paying support through income withholding, the support order must include a requirement that whenever a party to the case is receiving IV-D services, support payments must be paid through the department as provided in [section 5].*

~~(11)(12)~~ (a) ~~For the purposes of income withholding provided for in subsection (10), whenever~~ If the department establishes paternity or establishes or modifies a child support obligation, the department's order must include a provision requiring the obligor, for as long as the department is providing support enforcement services, to keep the department informed of the name and address of the obligor's current employer, whether the obligor has access to health insurance through an employer or other group, and, if so, the health insurance policy information; each party other than the department to promptly file with the department and to update, as necessary, information on:

(i) *identity of the party;*

[(ii) *social security number;*]

(iii) *residential and mailing addresses;*

(iv) *telephone number;*

(v) *driver's license number;*

(vi) *name, address, and telephone number of employer; and*

(vii) *if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the obligor's and obligee's employer.*

(b) *The order must further direct that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the department's due process requirements for notice and service of process are met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the department.*

(c) *The department shall keep the information provided under subsection (12)(a) confidential except as necessary for purposes of Title IV-D of the Social Security Act.*

~~(12)(13)~~ The hearings officer may:

(a) compel obedience to the hearings officer's orders, judgments, and process and to ~~any~~ subpoenas and orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

(b) compel the attendance of witnesses at administrative hearings;

(c) compel obedience of subpoenas for paternity blood tests;

(d) compel the production of accounts, books, documents, and other evidence; and

(e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in accordance with the provisions of 2-4-104.

(f) *compel the production of information requested by the department or IV-D agency of another state under 40-5-443.*

~~(13)(14)~~ A contempt occurs whenever:

(a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer or of the department;

(b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for genetic paternity tests fails to do so;

(c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;

(d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply with discovery requests; ~~or~~

(e) *a person or entity compelled by administrative subpoena from the department or another IV-D agency to produce financial information or other information needed to establish paternity or to establish, modify, or enforce a support order fails to do so;*

~~(e)(f)~~ a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time that income is required to be withheld and paid to the department and the payor fails to take the required action.

(g) *a payor or labor union fails to provide information to the department or another IV-D agency when requested under 40-5-443[; or]*

[(h) *a financial institution uses information provided by the department pursuant to [section 11] for any other purpose without the authorization of the department].*

~~(14)(15)~~ ~~Am~~ Before initiating a contempt proceeding, the department shall give the alleged contemnor notice by personal service or certified mail of the alleged infraction and a reasonable opportunity to comply with the law and to cure the alleged infraction. In order to initiate a contempt proceeding, an affidavit of the facts constituting a contempt must be submitted to the hearings officer, who shall review it to determine whether there is cause to believe that a contempt has been

committed. If cause is found, the hearings officer shall issue a citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be determined to be in contempt and required to pay a penalty of not more than \$500 for each count of contempt. The citation, along with a copy of the affidavit, must be served upon the alleged contemnor either by personal service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

(15)(16) At the time and date set for hearing, the hearings officer shall proceed to hear witnesses and take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearings officer finds the alleged contemnor in contempt, the hearings officer may impose a penalty of not more than \$500 for each count found. The hearings officer's decision constitutes a final agency decision, subject to judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

(16)(17) An amount imposed as a penalty may be collected by any remedy available to the department for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs of administrative hearings conducted under this chapter.

(17)(18) The penalties charged and collected under this section must be paid into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected."

Section 46. Section 40-5-227, MCA, is amended to read:

"40-5-227. Filing and docketing of final orders — orders effective as district court decrees. (1) An abstract of any final administrative order under this chapter may be filed in the office of the clerk of the district court of any county of Montana. ~~The~~ Upon the request of the department, the order, if approved, must be docketed in the judgment docket of the district court. The properly filed and docketed order has all the force, effect, and attributes of a docketed order or decree of the district court, including but not limited to lien effect and enforceability by supplemental proceedings, writs of execution, and contempt of court proceedings. A final administrative order of the department is effective and enforceable without filing and docketing the order in the district court. Contempt of court proceedings and writs of execution based on the administrative order may not be requested from the district court unless the administrative order is first docketed with the district court. The administrative order may not operate as a judgment lien, unless the order is first docketed with the district court or a lien is otherwise perfected under the laws of this state, including 40-5-248.

(2) A final administrative order that determines and sets periodic support payments in the absence of a district court order, when filed and docketed under this section, may be modified by a district court order only as to installments accruing after actual notice to the parties of any motion for modification. The standard for a modification is that set forth in 40-4-208.

(3) The department may issue a warrant for distraint based upon a properly filed and docketed order pursuant to 40-5-247."

Section 47. Section 40-5-232, MCA, is amended to read:

"40-5-232. Establishment of paternity — notice of paternity determination parental responsibility — contents. (1) When the paternity of a child has not been legally established under the provisions of Title 40, chapter 6, part 1, or otherwise, the department may proceed to establish paternity under the provisions of 40-5-231 through 40-5-237. An administrative hearing held under the provisions of 40-5-231 through 40-5-237 is a contested case within the meaning of 2-4-102 and is subject to the provisions of Title 2, chapter 4, except as otherwise provided in 40-5-231 through 40-5-237.

(2) It is presumed to be in the best interest of a child to legally determine and establish paternity. A presumption under this subsection may be rebutted by a preponderance of the evidence.

(3) In ~~any~~ a proceeding under 40-5-231 through 40-5-237, if ~~a person acknowledges paternity of a child in writing and the acknowledgment is filed with the department, an alleged father consents in writing to entry of an order declaring the alleged father to be the legal father of a child, the department may enter an order establishing legal paternity. As a part of a voluntary acknowledgment a consent to entry of an order declaring paternity, the department shall provide information to the parents regarding the rights and responsibilities of acknowledging an alleged father consenting to entry of an order declaring paternity. An acknowledgment A consent to entry of an order declaring paternity is binding on a parent who executes it, whether or not the parent is a minor.~~

(4) Full faith and credit must be given to a determination of paternity made by any other state, whether presumed by law, established through voluntary acknowledgment, or established by administrative or judicial processes.

(5) The department shall commence proceedings to establish paternity by serving on an alleged father a notice of ~~paternity determination parental responsibility~~. The department may not serve the notice unless it has:

(a) a sworn statement ~~from the child's mother~~ claiming that the alleged father is the child's natural father;

(b) evidence of the existence of a presumption of paternity under 40-6-105; or

(c) any other reasonable cause to believe that the alleged father is the child's natural father.

(6) Service on the alleged father of the notice of ~~paternity determination parental responsibility~~ must be made as provided in 40-5-231(2). The notice must include:

(a) an allegation that the alleged father is the natural father of the child involved;

(b) the child's name and place and date of birth;

(c) the name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;

(d) the probable time or period of time during which conception took place;

(e) a statement that if the alleged father fails to timely deny the allegation of paternity, the question of paternity may be resolved against the alleged father without further notice;

(f) a statement that if the alleged father timely denies the allegation of paternity:

(i) the alleged father is subject to compulsory paternity blood testing;

(ii) a paternity blood test may result in a presumption of paternity; and

(iii) upon receipt of the paternity blood test results, if the alleged father continues to deny paternity, the alleged father may request the department to refer the matter to district court for a determination of paternity.

(7) The alleged father may file a written denial of paternity with the department within 20 days after service of the notice of ~~paternity determination~~ *parental responsibility*.

(8) When there is more than one alleged father of a child, the department may serve a notice of ~~paternity determination~~ *parental responsibility* on each alleged father in the same consolidated proceeding or in separate proceedings. Failure to serve notice on an alleged father does not prevent the department from serving notice on any other alleged father of the same child."

Section 48. Section 40-5-233, MCA, is amended to read:

"40-5-233. Establishment of paternity — administrative hearing — subpoena — compulsory blood testing. (1) ~~When the department receives a timely written denial of paternity, it may order the alleged father to appear for an administrative hearing. The hearing may be conducted by teleconferencing methods. If the testimony and other supplementary evidence demonstrate a reasonable probability that the alleged father had sexual intercourse with the child's mother during the probable time of the child's conception or if the evidence shows a probable existence of a presumption under 40-6-105, the department may issue a subpoena ordering the alleged father to submit to paternity blood testing. A reasonable probability of sexual intercourse during the possible time of conception may be established by affidavit of the child's mother.~~

(1) (a) *Paternity blood testing may be requested by the alleged father, the mother, or the child through the child's custodian and may be made in conjunction with or in addition to a notice the department issues under 40-5-232. The request must be in writing and must be supported by a sworn statement of the requester that includes:*

(i) an allegation of paternity and sufficient facts to establish a reasonable probability that the alleged father engaged in an act with the child's mother during the probable time of the child's conception that could have resulted in the child's conception; or

(ii) a denial of paternity and sufficient facts to establish a reasonable probability of the nonexistence of contact between the alleged father and the child's mother that could have resulted in the child's conception.

(b) If the department determines after a review of a sworn statement that there are sufficient facts to establish a reasonable probability of paternity or nonpaternity as claimed by the requesting party, the department shall issue a subpoena ordering the alleged father, the mother, or the child through the child's custodian to submit to blood testing.

(c) A pending request for blood testing under this section does not prevent the department from issuing a notice of parental responsibility under 40-5-232.

(d) Denial of a request for paternity blood testing under this subsection (1) is not a finding of nonpaternity and does not prevent the issuance of a notice under 40-5-232. A denial does not affect the completion of any pending action initiated under 40-5-232.

(2) (a) The department may order an alleged father to appear for an administrative hearing when:

(i) the department determines that the sworn statement provided in subsection (1) does not contain sufficient facts to issue a blood test subpoena and that additional examination of witnesses or evidence is necessary; or

(ii) the department receives a timely filed written denial of paternity in response to a notice under 40-5-232.

(b) The hearing must initially be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. At the request of a party, the hearings officer shall, at the close of a teleconference hearing, grant a de novo in-person hearing.

(c) The department may issue a subpoena ordering the alleged father to submit to paternity blood testing if the testimony and other supplementary evidence demonstrate a reasonable probability:

(i) that the alleged father engaged in an act with the child's mother during the probable time of the child's conception that could have resulted in the child's conception; or

(ii) when the alleged father's paternity is presumed under 40-6-105, of the nonexistence of contact between the alleged father and the child's mother that could have resulted in the child's conception.

(d) For the purposes of this subsection (2), a reasonable probability of an act during the possible time of conception may be established by affidavit of the child's mother without need for the mother to appear at the hearing.

(3) Previous paternity actions under this part that did not result in a subpoena for paternity blood testing do not prevent the department from recommencing a paternity action if the department believes it can establish any of the factors listed in subsection (2)(c) or (2)(d).

~~(2)(4)~~ *When there is reasonable cause to suggest that a blood test sample of a person submitting to a blood test was not the sample of the alleged father,*

mother, or child, an additional hearing may be held. The scope of the hearing is limited to questions involving the blood drawing or the chain of custody at the blood drawing site. The ~~hearing~~ *hearing* officer may order retesting of any party.

(3)(5) If the department does not receive a timely *filed* written denial of paternity or if an alleged father fails to appear at a scheduled hearing or for a scheduled paternity blood test, the department may enter an order declaring the alleged father the legal father of the child. The order will take effect within 10 days after entry of the default unless the alleged father before the 10th day presents good cause for failure to make a timely denial or for failure to appear at the hearing or to undergo paternity blood testing. The department may not enter an order under this section if there is more than one alleged father unless the default applies to only one of them and all others have been excluded by the results of paternity blood testing. An order issued under the provisions of this section may be set aside as provided in 40-5-235(3).

(4)(6) If the rights of others and the interests of justice so require, the department may apply to any district court under the provisions of 2-4-104 for an order compelling an alleged father to submit to paternity blood testing. The court shall hear the matter as expeditiously as possible. If the court finds reasonable cause to believe that the alleged father is the natural or presumed father of the child, the court shall enter an order compelling the alleged father to submit to a paternity blood test. ~~As provided in subsection (1), reasonable~~ *Reasonable* cause may be established by affidavit of the child's mother."

Section 49. Section 40-5-235, MCA, is amended to read:

"40-5-235. Effect of order establishing paternity — birth records — relief from order. (1) An administrative order of the department declaring the paternity of a child, ~~docketed as provided in 40-5-227,~~ establishes the legal existence of the parent and child relationship for all purposes and confers or imposes all parental rights, privileges, duties, and obligations.

(2) Upon the request of the mother or father of ~~the~~ *a child born in this state,* the department shall prepare a substitute certificate of birth, if necessary, consistent with the administrative order. The substitute certificate of birth is subject to the provisions of 40-6-123, with references to "court" taken to mean "department".

(3) Except for an order based on a ~~voluntary acknowledgment of consent to entry of an order declaring~~ paternity, the department may set aside an administrative order establishing the paternity of a child upon the application of any affected party and upon a showing of any of the grounds and within the timeframes provided in Rule 60(b) of the Montana Rules of Civil Procedure.

(4) An order of the department under 40-5-232 through 40-5-235 may be reviewed under the provisions of Title 2, chapter 4, part 7."

Section 50. Section 40-5-236, MCA, is amended to read:

"40-5-236. Referral of paternity issue to district court — record — parties — exclusion of other matters — fees. (1) If the scientific evidence resulting from a paternity blood test does not exclude the alleged father and the alleged father continues to deny paternity, the alleged father shall file a written objection with the department within 20 days after service of the paternity blood

test results. Upon receipt of the written objection, the department shall refer the matter to the district court for a determination based on the contents of the administrative hearing record and any further evidence that may be produced at trial. Except as otherwise provided in 40-5-231 through 40-5-237, proceedings in the district court must be conducted pursuant to Title 40, chapter 6, part 1.

(2) The administrative record must include:

(a) a copy of the notice of ~~paternity determination~~ *parental responsibility* and the return of service of the notice;

(b) the alleged father's written denial of paternity, if any;

(c) the transcript of the administrative hearing;

(d) the paternity blood test results and any report of an expert based on the results; and

(e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they had been served with a summons and complaint. The department shall serve written notice upon the alleged father, as provided in 40-5-231(2), that the issue of paternity has been referred to the district court for determination.

(4) In a proceeding in the district court, the department shall appear on the issue of paternity only. The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that an appointment is necessary and in the best interest of the child. Neither the mother nor the child is a necessary party, but either may testify as a witness.

(5) No other matter may be joined with an action to determine the existence or nonexistence of the parent and child relationship under this section. The parties shall institute an independent action to address other issues, including visitation and custody.

(6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees for attorneys appointed under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110."

Section 51. Section 40-5-237, MCA, is amended to read:

"40-5-237. District court paternity proceedings — objection to tests — additional tests — expert's report — admissibility of evidence. (1) In a matter referred to the district court, if an alleged father objects to the procedures for or the results of a paternity blood test, the alleged father shall file a written objection with the court within 20 days after service of the notice required by 40-5-236(3). The court shall order an additional paternity blood test *upon the alleged father's advance payment for additional testing* if a written objection is timely filed or at the request of the department. *The alleged father's advance payment must be returned to the alleged father if the test does not produce evidence of the alleged father's paternity.* An additional test must be performed by the same or another expert who is qualified in paternity blood testing. Failure of the alleged father to make a timely challenge is considered a waiver of any defense to the test results or test procedures, including the chain of custody.

(2) If an objection to the paternity blood test is not timely filed, the paternity blood test expert's completed and certified report of the results and conclusions of a paternity blood test is admissible as evidence without additional foundation testimony or other proof of authenticity and accuracy if the laboratory in which the expert performed the test is accredited for parentage testing by the American association of blood banks. Accreditation may be established by verified statement or reference to published sources. This subsection does not limit the right of a party to contest the identity of persons submitting to testing.

(3) In any hearing before the court or at trial, testimony relating to sexual intercourse of the mother with any person who has been excluded from consideration as a possible father of the child involved by the results of a paternity blood test is inadmissible in evidence.

(4) When a paternity blood test excludes an alleged father from possible paternity, the test is conclusive evidence of nonpaternity of the alleged father for all purposes in the district court."

Section 52. Section 40-5-263, MCA, is amended to read:

"40-5-263. Central clearinghouse — interstate enforcement services — powers and duties of the department. (1) The department shall establish a clearinghouse for the registration of all interstate IV-D cases referred to the department by other states. The clearinghouse shall serve as the central point for the receipt and dissemination of information regarding interstate enforcement requests, including but not limited to:

(a) petitions under the Revised Uniform Reciprocal Enforcement of Support Act, *Uniform Reciprocal Enforcement of Support Act*, or the Uniform Interstate Family Support Act; and

(b) wage withholding requests under part 4 of this chapter.

(2) (a) A case must be referred to the clearinghouse to be processed as a IV-D case and receive the benefits of IV-D status and clearinghouse services.

(b) The clearinghouse may accept any interstate IV-D referral made by interstate application or by petition under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act. An application must be made on forms prescribed by the department.

(3) Upon certification by the initiating state that a case filed in the registry of foreign support orders, including a petition under *the Uniform Reciprocal Enforcement of Support Act*, the Revised Uniform Reciprocal Enforcement of Support Act, or the Uniform Interstate Family Support Act, is eligible for IV-D services and that the obligor resides, has property, or derives income in this state, the department may: ~~establish or enforce a child support obligation by any appropriate statute, including the remedies in this chapter~~

(a) *proceed under Title 40, chapter 5, part 1; or*

(b) *pursue any other remedy available to it to establish or enforce a support order.*

(4) If necessary, the department shall establish the paternity of the child.

(5) The clearinghouse shall:

(a) review and acknowledge receipt of any interstate IV-D referral;

(b) request missing information from the initiating state;

(c) determine appropriate enforcement remedies and forward the referral to the appropriate enforcement unit;

(d) provide status updates to the initiating state, including the location of the responsible enforcement unit;

(e) locate an obligor and the obligor's assets, if necessary; and

(f) initiate a IV-D referral if services are provided by the department to a resident of this state and the obligor resides outside the state.

(6) If the department is providing support enforcement services to a resident of this state, the director or the director's designee may certify any interstate petition, application, and referral, including a petition under part 1 of this chapter.

(7) *A lien created by operation of law or issued by order of a court or IV-D agency in another state to enforce a support order may, at the request of the other IV-D agency, be registered with the department. Upon registration, the lien applies to any of the obligor's real and personal property located in this state with the same force and effect as a lien established under 40-5-248. At the request of the other IV-D agency, a registered lien may be enforced by the department using any remedy available to enforce a support lien under 40-5-248."*

Section 53. Section 40-5-264, MCA, is amended to read:

"40-5-264. Cooperative agreements. (1) The department may enter into cooperative agreements with any person, firm, corporation, association, political subdivision, *Indian tribe or tribal organization as defined in 25 U.S.C. 450b*, or department of this state as a cooperating contractor to provide enforcement services.

(2) A cooperating contractor:

(a) shall act as an independent support enforcement contractor if the cooperating contractor provides enforcement services; and

(b) may pursue any remedy available to the department, as limited by the terms of the cooperative agreement.

(3) The department may refer an enforcement case to a cooperating contractor in the county where the obligor resides."

Section 54. Section 40-5-271, MCA, is amended to read:

"40-5-271. Registration of support orders. (1) The department ~~shall~~ *establish and maintain a support order registry.*

(2) ~~The registry must contain the support orders issued by the department.~~

(3) ~~In a IV-D case, the department shall, upon the request of the obligor or the obligee, or may register a support order of a district court of this state or a support order of a court or administrative agency of another state with jurisdiction to enter the order. A certified copy of the order to be registered must accompany the written request for registration.~~

(4) ~~Upon registration, the support order must be treated in the same manner and have the same effect as a support order issued by the department, and an abstract of the order may be filed under the provisions of 40-5-227. Review of the order under 40-5-272 is available only when the department is providing child support enforcement services for the order.~~ may, for the purpose of review and modification proceedings under 40-5-272 and 40-5-273, register support orders issued by a district court of this state or by a court or administrative agency of another state. Registration of the order under this section does not confer jurisdiction for any purpose other than for the review and modification process.

(2) When the department conducts review and modification proceedings, the department shall give the parties notice by personal service or certified mail and opportunity to contest registration of the order. A party seeking to vacate the registered order has the burden of proving that the court or agency issuing the order:

(a) did not have jurisdiction to enter the order;

(b) did not have personal jurisdiction over the party; or

(c) did not give the party reasonable notice and opportunity to be heard before the order was entered.

(3) (a) As an alternative to any other registration process or remedy available for the enforcement of a support order issued by a court or agency in another state, the department may register the support order under this subsection (3).

(b) Registration under this subsection (3) is only for the purpose of enforcement and does not confer jurisdiction for any other purpose such as visitation, custody, or paternity disputes.

(c) If an order is registered for enforcement under this subsection (3), the department shall notify the parties to the order of the registration. A copy of the registered order must be included with the notice. The notice must inform the parties:

(i) of the amount of any alleged arrearage as of the date of the notice;

(ii) that a party may request a hearing to vacate the registration or to assert defense to any alleged arrearage for any reason set out in subsection (3)(e);

(iii) that a hearing to contest the validity or enforcement of the order must be requested within 20 days after service of the notice; and

(iv) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearage and will preclude further contest of the order with respect to any matter that could have been asserted at the hearing.

(d) A party seeking to contest the validity or enforcement of a registered order shall request a hearing within 20 days after service of the notice of registration. If a party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law. If a party timely requests a hearing to contest the validity or enforcement of the order, the department shall schedule the matter for hearing.

(e) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(i) the court or agency issuing the order did not have subject matter jurisdiction to enter the order or lacked personal jurisdiction over the contesting party;

(ii) the court or agency issuing the order did not give the party reasonable notice and opportunity to be heard before the order was entered;

(iii) the order was obtained by fraud;

(iv) the issuing court or agency has stayed enforcement of the order pending appeal;

(v) the order has been vacated, suspended, or modified by a later order;

(vi) there is a defense under the law of this state to the remedy sought; or

(vii) the statute of limitations precludes enforcement of some or all of the arrearages.

(f) If the contesting party does not establish a defense under subsection (3)(e) to the validity or enforcement of the order, the department shall issue an order confirming the order. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of the registration. A confirmed order is enforceable as of the date of confirmation in the same manner as an order issued by the department or a district court of this state.

(g) In a proceeding for arrears, the statute of limitations under the laws of this state or of the issuing state, whichever is longer, applies.

(h) Hearings under this subsection (3) are subject to the provisions of the Montana Administrative Procedure Act and must initially be conducted by teleconferencing methods. At the request of a party, the hearings officer shall, at the close of a teleconference hearing, grant a de novo in-person hearing."

Section 55. Section 40-5-273, MCA, is amended to read:

"40-5-273. Administrative review of child support orders — modifying orders. (1) A review application setting forth facts meeting any of the criteria for review of a child support order established in 40-5-272 must be scheduled for an administrative hearing, and a hearings officer must be appointed by the department. Unless the hearings officer determines under rules of the department that an in-person hearing is necessary, the hearing must be conducted by telephone conference. The order scheduling the hearing must be served on the obligor and the obligee at least 60 days before the hearing. The order must include the following information as an exception to 2-4-601:

(a) the date and time for the hearing and, if appropriate, the place for the hearing;

(b) a statement of the purpose, objectives, and possible consequences of the review;

(c) a statement of the right of the obligor and the obligee to request the hearings officer to issue subpoenas compelling the appearance of witnesses and the production of documents for the hearing; and

(d) a requirement that the obligor and the obligee provide the hearings officer with telephone numbers at which they and their witnesses may be contacted for the hearing.

(2) The hearings officer may issue an order commanding the obligor or the obligee, or both, to produce financial information. The order must be personally served with the order scheduling the hearing. The hearings officer may also issue subpoenas ordering the department or other parties to produce information in their possession about the obligor and the obligee that may be reasonably necessary for application of the guidelines. Any information so obtained by the hearings officer must be provided to the department and other parties prior to the hearing.

(3) The requested modification of the order must be determined on the evidence submitted to the hearings officer under the following conditions:

(a) If an applicant other than the department fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered a withdrawal of the application.

(b) If a party other than the applicant fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered to mean that the party does not oppose the modification.

(c) If the department is the applicant and if either the obligor or the obligee, or both, fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered an admission that the party or parties do not oppose the modification.

(4) An order entered under the circumstances described in subsection (3)(a), (3)(b), or (3)(c) becomes final within 10 days of issuance unless a party provides the hearings officer an affidavit showing good cause for failure to provide a telephone number or failure to be available for the hearing when telephoned.

(5) A provision of law may not be construed to mean that an obligor or an obligee is a client of the department, and the department is not considered a party to the action.

(6) (a) In addition to the powers and duties provided by other law, the hearings officer shall, to ensure the equitable determination of a support obligation, during a review hearing:

(i) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts;

(ii) introduce evidence on behalf of the parties;

(iii) apply the guidelines to the facts elicited from the hearing; and

(iv) inquire as to any circumstances that may require variance from the guidelines.

(b) If a party is represented by legal counsel, the hearings officer may allow the counsel to present that party's case.

(7) The hearings officer shall determine a support obligation in accordance with the guidelines and shall issue a modifying order. If the hearings officer determines that the difference between the existing support order and the amount determined under the guidelines is negligible under rules issued by the department, the modifying order may not change the amount of the support obligation. Even though the review may indicate that a modification of the support obligation is appropriate, the department may not modify the support order if the hearings officer determines, after the review hearing, that to do so would not be in the best interests of the child under the rules issued by the department. An increase in child support is presumed to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee demonstrates it would not be in the best interests of the child. The modifying order must ~~prospectively~~ modify the underlying support order from the date of service of the order scheduling the hearing *and may modify the underlying order from the date found to be the date that the amount required for support decreased. The obligee may be ordered to repay the obligor for any support amount overpayment found to have been paid since the date that the amount required for support decreased. If the case is a IV-D case, the department shall, on request of the obligor, enforce the obligee's repayment of the overpaid amount using any procedure provided in this chapter for payment, enforcement, and collection of child support or a delinquency.*

(8) The hearings officer shall make a written determination whether health insurance is available to the child of the obligor through the obligor's employment or other group insurance. If the hearings officer determines health insurance is available to the child of the obligor, the hearings officer shall issue a modifying order that requires the obligor to obtain and keep health insurance for the child. If the hearings officer determines that health insurance is not available to the child of the obligor, ~~he~~ *the hearings officer* shall issue a modifying order containing the notices provided in subsection (9). An order to provide health insurance is presumed to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee demonstrates it would not be in the best interests of the child.

(9) In addition to complying with other requirements of law, the modifying order must include the following notices and warnings:

(a) that the obligor shall keep the department informed of the name and address of ~~his~~ *the obligor's* current employer and information on health insurance available to the obligor through the obligor's employment or other group insurance;

(b) that the obligor shall obtain and keep health insurance for the child of the obligor whenever it is available through the obligor's employment or other group insurance; and

(c) that the modifying order is subject to future administrative review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D.

(10) Orders entered under this section are final agency decisions, subject to judicial review pursuant to the Montana Administrative Procedure Act. All orders entered under this section must notify the parties that the order is subject to judicial review under Title 2, chapter 4, part 7.

(11) The parties to the support order and the department when it is providing services under IV-D may enforce the support order or modify that order independently, as provided in 40-4-208 and 53-2-613(4)(d)."

Section 56. Section 40-5-274, MCA, is amended to read:

"40-5-274. Child support payments to follow the child. (1) A support order issued or modified under this part must contain a provision requiring the child support *obligation* to be paid to:

(a) the legal custodian of the minor child;

(b) ~~(i) any other person, organization, or agency having legal physical custody of the minor child or collecting child support on behalf of the minor child under a legal assignment of rights a person, organization, or agency to which the legal custodian voluntarily or involuntarily relinquishes physical custody of the child;~~

~~(ii) the court for the benefit of the minor child;~~

(c) ~~any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or to any other person, organization, or agency entitled by law, assignment, or similar reason to receive or collect the child support obligation.~~

~~(d) any assignee or other person, organization, or agency authorized to receive or collect child support.~~

(2) If the department is providing services under Title IV-D of the Social Security Act, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment.

~~(3)~~ (3) An order that omits the provision required by subsection (1) is subject to the requirements of subsection (1) without need for an amendment to the order or for any further action by the department."

Section 57. Section 40-5-302, MCA, is amended to read:

"40-5-302. Purpose — applicability. (1) The purpose of this part is to provide a direct method of deducting money from a person's income for the payment of child support ~~if that person has been delinquent in the payment of court ordered child support.~~

(2) *Income withholding under this part is available without amendment of the support order even though the support order did not provide for withholding or provided for other payment arrangements."*

Section 58. Section 40-5-303, MCA, is amended to read:

"40-5-303. Petition for income deduction — who may initiate. (1) *If an obligor is exempted from immediate income withholding under 40-5-315 or is not otherwise subject to an income-withholding order, the obligor's income may be withheld for the payment of child support if the obligor becomes delinquent in the payment of support, a person or entity referred to in subsection (2) notifies the obligor that income withholding will be initiated if the delinquent amount is not paid within 8 days of the date of the notice, and the obligor does not pay the delinquent amount within that time. Notification that income withholding will be initiated if a delinquency is not paid within 8 days of the date of the notice is not necessary if such a notice was given for a prior delinquency and the prior delinquency in fact existed. This notice is different from the notice required by 40-5-305.*

~~(2) A petition for an income deduction~~ *Income withholding for the payment of delinquent child support payments may be made initiated by:*

~~(1)(a)~~ (a) the person named as the recipient of the child support payments in the child support order;

~~(2)(b)~~ (b) the child or the guardian of the child named in the child support order; or

~~(3)(c)~~ (c) the department of public health and human services.

(3) (a) *At the request of an initiating party who has determined that an obligor is delinquent, the district court shall issue an order for income deductions for immediate service upon the obligor's payor or payors. The order is limited to current support unless modified to include arrears as provided in 40-5-308.*

(b) *At the same time an income deduction order is issued, the requesting party shall notify the obligor as provided in 40-5-305 that income deductions have been initiated.*

(4) *Deductions under this section for current support may be terminated only if:*

(a) *the district court determines after a hearing that the obligor was not delinquent when the deduction order was issued;*

(b) *the obligation to pay support has terminated and all delinquencies are paid in full; or*

(c) *the department of public health and human services has superseded the deduction order under authority of Title 40, chapter 5, part 4.*

(5) *As used in this part, the following definitions apply:*

(a) *"Employer" includes a payor.*

(b) (i) "Income" means any form of periodic payment to a person, regardless of source, including commissions, bonuses, workers' compensation, disability benefits, payments under a pension or retirement program, interest and earnings, and wages.

(ii) Income does not include:

(A) an amount, other than creditor claims, required by law to be withheld, including federal, state, and local taxes and social security; or

(B) an amount exempted from judgment, execution, or attachment by federal or state law.

(c) "Payor" means any entity that pays income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, or state agency or an agent of any one of them, subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure."

Section 59. Section 40-5-304, MCA, is amended to read:

"40-5-304. When child support payments considered delinquent. (1) Nonpayment of child support required by any a district court or administrative order of a district court or by a similar order of a court of another jurisdiction becomes delinquent under this part when the amount owed is equal to 3 months of child support payments 8 working days after the last day of the month in which the payment is due.

(2) Child support payments may be considered delinquent under this part only in reference to a court or administrative order setting child support payments.

(3) In the case of support orders not subject to immediate income withholding under 40-5-315, including cases in which the court or administrative authority has made a finding of good cause or alternative arrangement, the income of the obligor is subject to withholding under this part beginning on the date on which the obligor is found to be delinquent in the payment of support due under a support order in an amount equal to at least 3 months' support payments. Intervening agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part. For the purposes of this section, "alternative arrangement" has the meaning provided in 40-5-315(3)(b)."

Section 60. Section 40-5-305, MCA, is amended to read:

"40-5-305. Notice. On petition for income deductions for payment of delinquent child support, the district court shall cause notice to be served upon the obligor, stating that if the delinquency is not discharged within 15 days, the court will order an income deduction for the payment of the delinquent child support and for the payment of current child support as it becomes due and payable. The notice shall also state that the obligor may contest the allegation that child support payments are delinquent.

(1) A party initiating income deductions under this part shall serve the obligor with notice if:

(a) an order for immediate income deductions is issued because of a delinquency;

(b) additional delinquencies accrued subsequent to the issuance of an income-deduction order and the requesting party proposes to add those delinquencies to an existing order for income deductions;

(c) immediate withholding under 40-5-315 or delinquency withholding under 40-5-303 has commenced for current support and there are delinquencies due for a period prior to issuance of the income-deduction order that the requesting party proposes to add to the deduction order; or

(d) the obligation to pay current support has terminated and there are support arrears still owing for the period prior to termination.

(2) The notice must contain a statement:

(a) of the amount subject to withholding, including a computation showing the period and total amount of the delinquency as of the date of the notice;

(b) that withholding applies to all current and subsequent payors;

(c) of the procedures to follow if the obligor desires to contest income withholding on the grounds that the initiation of withholding or the modification of an existing order for deductions is improper or that the amount to be deducted is in error due to a mistake of fact; and

(d) of the period of time within which the obligor is required to file a request for hearing and that failure to file the hearing request within the time limit will result in an income-deduction order being served upon the payor for the amount stated in the notice.

(3) The notice must be served upon the obligor personally or by certified mail."

Section 61. Section 40-5-306, MCA, is amended to read:

"40-5-306. Discharge of delinquency. If (1) In a case in which only arrears are owed, if the obligor pays the total amount of child support due and payable in arrears within the 15 days after service of the notice specified in 40-5-305, no an order for deduction may not issue. This discharge of delinquency does not affect or otherwise limit any action as a result of any subsequent delinquencies.

(2) If there is a current support obligation, payment of arrears after service of the notice required under 40-5-305 or after service of the income-deduction order on the payor does not prevent the issuance or continuance of an income-deduction order for the payment of current support."

Section 62. Section 40-5-307, MCA, is amended to read:

"40-5-307. Delinquency of child support denied — hearing. If, within 15 days after service of a notice under 40-5-305, the obligor responds to the notice and denies that child support payments are delinquent income withholding initiated because of a delinquency is proper or denies that the amount or arrearages stated in the notice is owing, the district court shall hold a hearing to determine whether or not there is a deficiency in child support payments

sufficient to be delinquent under 40-5-304 income withholding will take place or continue."

Section 63. Section 40-5-308, MCA, is amended to read:

"40-5-308. Order for deduction from income for child support payments. (1) If the obligor fails to respond to notice within 15 days or if the district court determines that the obligor is delinquent in payment of child support as provided in 40-5-304, the district court shall issue an order to the obligor's employer ordering a deduction from the obligor's wages or salary for the payment of child support. The court may authorize the requesting party to continue an immediate income-deduction order issued because of a delinquency, may modify an existing deduction order, or may authorize issuance of an income-deduction order if:

- (a) the obligor fails to timely respond to the notice provided under 40-5-305;
- (b) the obligor fails to appear at a scheduled hearing;
- (c) the court determines that the obligor is delinquent in the payment of support; or
- (d) the court determines there are new or additional delinquencies to be added to an existing deduction order.

(2) The order must state:

- (a) the action involved;
- (b) the total amount of back child support due and the amount of each court-ordered installment of child support;
- (c) the amount to be deducted from the wages or salary of the obligor each pay period obligor's income and the amount, if any, allowed to the employer payor under 40-5-309(2) as a fee for handling the deduction;
- (d) the length of time the order is to remain in effect, if ascertainable; and
- (e) the name and address of the clerk of court person or entity to whom the deduction is to be paid by the employer payor."

Section 64. Section 40-5-309, MCA, is amended to read:

"40-5-309. Amount to be deducted from income. (1) (a) The amount of money to be deducted each pay period from the obligor's income is:

- (i) (A) the amount of money necessary to pay current installments of child support as they become due and payable; plus
- (B) the amount of money that, when deducted in equal amounts each pay period, will pay off all outstanding child support payments delinquent within 2 years; or
- (ii) not less than 25% of the obligor's disposable earnings.

(b) If withholding is annualized, when deducted in equal amounts, the amount withheld each pay period must be sufficient to pay all installments due in a 12-month period under the order to withhold.

(2) The district court may allow a fee of not to exceed \$5 per deduction, which the employer payor may deduct from the obligor's wages or salary income for the expense of administering the deduction.

(3) The total amount to be deducted under subsections (1) and (2) may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b), as amended.

(4) Except as provided in 40-5-315, the child support income deduction must cease when there is no past-due child support owing, unless the district court orders continued income deductions for payment of child support installments as they become due and payable."

Section 65. Section 40-5-310, MCA, is amended to read:

"40-5-310. Priority of income deduction. An order for the deduction of income for the payment of delinquent child support payments takes precedence over any:

- (1) assignment of wages or salary income;
- (2) voluntary deductions from the obligor's wages or salary income; and
- (3) other court-ordered garnishment of wages or salary income."

Section 66. Section 40-5-312, MCA, is amended to read:

"40-5-312. Duties of employers payors. (1) An employer A payor who has been served with an order for deduction under this part shall deduct the amount designated in the order beginning not later than the first pay period that occurs after 14 days from the service of the order. The employer payor shall, within 10 7 working days of the date the obligor is paid, promptly pay the deducted amount as directed by the order. The employer payor shall include with the payment a statement indicating the date the amount was deducted from the obligor's wages or salary income.

(2) Whenever an employer a payor receives more than one wage deduction order from the same district court, the employer payor may combine all amounts deducted into a single payment for that month, with the portion that is attributable to each obligor separately designated.

(3) Whenever there is more than one deduction order against a single obligor the employer payor shall:

(a) honor all wage deduction orders to the extent that the total amount deducted from the obligor's wages or salary income does not exceed the limits set in 40-5-309; and

(b) comply with the orders in the sequence in which they were served upon the employer payor except for income withholding income-withholding orders issued by the department of public health and human services. Under 40-5-423,

orders issued by the department have priority over all other orders without regard to the sequence in which they were served.

(4) The ~~employer payor~~ shall promptly notify the clerk of the district court that issued the deduction order of the termination of the obligor's employment and provide the obligor's last-known address and the name and address of the obligor's new ~~employer payor~~, if known."

Section 67. Section 40-5-313, MCA, is amended to read:

"40-5-313. Obligor rights protected — penalties. (1) An employer may not discharge, discipline, or refuse to hire a person because:

- (a) the person has a child support obligation;
 - (b) a withholding order has been issued for the person's ~~wages or salary~~ income; or
 - (c) proceedings have been initiated under this part.
- (2) An employer who violates the provisions of this section may be fined not more than \$100."

Section 68. Section 40-5-314, MCA, is amended to read:

"40-5-314. Civil liability for failure to comply with wage deduction order. (1) ~~An employer~~ A payor who purposely and knowingly fails to deduct support money from the obligor's ~~wages or salary~~ income and remit the money ~~to the district court~~ when ordered to do so under this part is liable to the obligee of the support order for any amount up to the accumulated amount the ~~employer~~ payor should have deducted and remitted.

(2) ~~An employer~~ A payor who complies with a deduction order under this part is not liable to the obligor or to any other person claiming rights derived from the obligor for wrongful deductions."

Section 69. Section 40-5-315, MCA, is amended to read:

"40-5-315. Immediate income deductions. (1) Notwithstanding any provision in this part requiring a delinquency as a prerequisite to an order for income deductions, except as provided in subsection (2), the ~~salaries and wages~~ income of a person obligated to pay child support by an order of a district court issued after October 1, 1991, ~~are~~ is subject to an immediate deduction order ~~under 40-5-308~~ on the effective date of the order, ~~regardless of whether there is a delinquency.~~

(2) An obligor's ~~salaries and wages~~ ~~are~~ income is not subject to deduction under this section in any case in which the district court finds:

- (a) that there is good cause not to require immediate deduction; or
 - (b) that there is an alternative arrangement between the parties for the payment of support that provides sufficient security to ensure compliance with the arrangement.
- (3) (a) For the purposes of subsection (2), a finding of good cause not to require immediate deduction must, at a minimum, be based on:

(i) a written determination and explanation by the district court as to why implementation of immediate deductions is not in the best interests of the child; and

(ii) in cases involving the modification of support orders, proof of timely payment of previously ordered support.

(b) As used in subsection (2)(b), "alternative arrangement" means a written agreement that is signed by the obligor and obligee and, in cases in which there is an assignment of support rights under 53-2-613, signed by the department of public health and human services; and that has been approved and entered into the record by the district court that issued or modified the support order.

(4) The clerk of court shall administer immediate income deductions under this section. The clerk of court, at any time after docketing the support order or modification of a support order, at the request of the obligee, and without need for amendment to the support order or for any further action by the district court, shall issue the order for income deductions ~~provided for by 40-5-308~~ for service upon the obligor's ~~employer payor~~. The deduction order must direct the ~~employer payor~~ to promptly deliver the amount deducted to the ~~clerk of court~~ department of public health and human services as provided in [section 5] for distribution to the obligee.

(5) ~~Wage deductions~~ Deductions under this section may be terminated only when:

(a) the obligation to pay support has terminated and all arrearages are paid in full;

(b) the obligor requests termination and the obligee and obligor have entered into an alternative arrangement as set forth in subsection (2)(b); or

(c) the department of public health and human services has superseded the deduction order under authority of Title 40, chapter 5, part 4.

(6) ~~If a delinquency occurs~~ a delinquency occurs subsequent to issuance of an immediate deduction order or if arrearages occur prior to beginning the deductions, the arrearages may be added to the deduction order only after compliance with the notice of hearing requirements of 40-5-305.

(7) (a) After October 1, 1991, whenever a support order is registered as provided by 40-5-184 or other law, the support order is subject to immediate orders to deduct income under this section.

(b) Withholding income under this section must be imposed when an obligor has ~~wages or salaries~~ income derived from within this state and the support order was issued in another state.

(8) This section applies only to support orders that are not being enforced by the department of public health and human services under Title IV-D of the Social Security Act. The withholding of income for support orders being enforced by the department is provided for in Title 40, chapter 5, part 4, and those procedures, if applicable, supersede the provisions of this section."

Section 70. Section 40-5-403, MCA, is amended to read:

"40-5-403. Definitions. As used in this part, the following definitions apply:

(1) "Alternative arrangement" means a written agreement signed by the obligor and obligee, and signed by the department in the case of an assignment of rights under 53-2-613, that has been approved and entered in the record of the court or administrative authority issuing or modifying the support order.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Employer" includes a payor.

(3)(4) "Income" means any form of periodic payment to a person, regardless of source, including commissions, bonuses, workers' compensation, disability payments, payments under a pension or retirement program, interest, and earnings and wages. However, income does not include:

(a) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes and social security; and

(b) any amounts exempted from judgment, execution, or attachment by federal or state law.

(4)(5) "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another state to which a person has assigned the right to receive current and accrued support payments.

(5)(6) "Obligor" means a person who owes a duty to make payments under a support order.

(6)(7) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof, who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure.

(7)(8) "Support order" means an order of the district court of the state of Montana, an order of a court of appropriate jurisdiction of another state, an administrative order established pursuant to proceedings under part 2 of this chapter, or an order established by administrative hearing process of an agency of another state with functions similar to those of the department set forth in part 2 of this chapter, that provides a set and determinable amount for temporary or final periodic payment of funds for the support of a child. Support order further includes the following:

(a) an order for reimbursement of public assistance money paid by a public agency for the benefit of a minor child;

(b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial parent of a child for whom child support is awarded under the same order collected under this chapter; and

(c) an order requiring payment of interest due on unpaid judgments for child support."

Section 71. Section 40-5-404, MCA, is amended to read:

"40-5-404. Other remedies available. (1) (a) The remedies provided in this part are in addition to and not in substitution for any other remedy that may otherwise be available to the department, and the department may simultaneously pursue other remedies to enforce a support obligation or to collect support arrearages.

(b) If the department is enforcing a support order of another state, an Indian tribe, or a foreign country under this part, the department may proceed under Title 40, chapter 5, part 1.

(2) (a) The department may enforce a support order of another state, an Indian tribe, or a foreign country under this part without registration of the support order under 40-5-180, 40-5-271, or any other law providing for registration of support orders.

(b) If the department is enforcing an order under subsection (2)(a), in addition to those defenses available under this part, a party may contest the validity of the support order by proving any defense contained in 40-5-190."

Section 72. Section 40-5-412, MCA, is amended to read:

"40-5-412. Delinquency income withholding. (1) (a) In the case of support orders not subject to immediate income withholding under 40-5-411, including cases in which the court or administrative authority has made a finding of good cause or determines that an alternative arrangement exists, the income of the obligor is subject to withholding under this part beginning on the date on which the obligor is found to owe unpaid support under the support order in an amount equal to or in excess of 1 month's support payment day the obligor becomes delinquent in the payment of support. Intervening agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part.

(b) For purposes of this section, an obligor becomes delinquent 8 working days after the last day of the month in which the payment is due.

(c) Agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part.

(2) (a) If the department determines that an obligor is delinquent, the department may notify the obligor that income withholding will be initiated if the delinquent amount is not received within 8 days of the date of the notice. If the obligor does not pay the delinquent amount within that time, the department may immediately send an order to withhold income to any payor. Notification that income withholding will be initiated if the delinquent amount is not received within 8 days of the date of the notice is not necessary if such a notice was given for a prior delinquency and the prior delinquency in fact existed. This notice is different from the notice required by subsection (2)(b). The order must be limited to current support unless modified to include arrears as provided in 40-5-413.

(b) *At the same time an order to withhold income is sent to a payor, the department shall notify the obligor as provided in 40-5-413 that income withholding has been initiated.*

~~(2)(3)~~ Notwithstanding the provisions of subsection (1), income withholding must be initiated, without regard to whether there is ~~an arrearage~~ *a delinquency*, on the earlier of:

- (a) the date the obligor requests that withholding begin; or
- (b) at the request of the obligee if the obligor is found, after an opportunity for hearing under 40-5-414, to be delinquent under the terms of an alternative arrangement for the payment of support.

~~(3)(4)~~ To accomplish the purpose of subsection (1), the department shall monitor all support payments not otherwise subject to immediate withholding. To facilitate monitoring, the department by written notice to the obligor may direct an obligor ~~who does not owe unpaid child support equal to or in excess of 1 month's support payment~~ to pay all support through the department, notwithstanding a court order directing payments to be made to the obligee or clerk of court.

~~(4)(5)~~ The only basis for contesting withholding under this section is a mistake of fact, which includes a mistake:

- (a) concerning the obligor's identity;
- (b) concerning the existence of the support obligation;
- (c) concerning the amount of support to be paid;
- (d) in the determination that the ~~delinquent support amounts owed are equal to or greater than 1 month's support payment~~ *obligor is delinquent in the payment of support*;
- (e) in computation of delinquent support amounts owed; or
- (f) in the allegation that the obligor is in default of an alternative agreement.

~~(6)~~ *A mistake of fact under subsection (5) does not include mistakes relating to issues of paternity or establishment of custody and visitation.*

Section 73. Section 40-5-413, MCA, is amended to read:

"40-5-413. Notice of intent to withhold income withholding. (1) ~~Prior to service of an initial order or a modification of an existing order on the payor under 40-5-416, the~~ *The* department shall serve ~~upon~~ the obligor *with* a notice of the intended action ~~when if~~:

- (a) income withholding is initiated ~~under 40-5-412~~ because of a delinquency;
- (b) additional arrearages ~~have~~ accrued subsequent to the issuance of an order to withhold and the department proposes to add those arrearages to ~~the an~~ *existing* withholding order; or

(c) immediate withholding *or delinquency withholding* has commenced for current support and there are arrearages due for a period prior to entry of the order to withhold that the department proposes to add to the withholding order.

(2) The notice must contain a statement:

(a) of the amount ~~to be withheld~~ *subject to withholding*, including a computation showing the period and total amount of the arrearages as of the date of the notice;

(b) that withholding applies to all current and subsequent payors;

~~(c) of the obligor's right to a hearing under 40-5-414 to contest the initiation of income withholding or modification of an existing order on the ground that the intended action is not proper because of mistake of fact, as provided in 40-5-412(4) of the procedures to follow if the obligor desires to contest income withholding on the grounds that the initiation of withholding or the modification of an existing withholding order is improper or that the amount to be withheld is in error due to a mistake of fact, as provided in 40-5-412;~~

(d) of the period of time within which the obligor ~~must~~ *is required* to file a request for a hearing and that failure to ~~file a request~~ *the hearing* within the time limit will result in income withholding orders being served upon the payor for the amount stated in the notice; and

(e) in those cases in which withholding is being initiated at the request of an obligee without regard to whether there is an arrearage as provided in 40-5-412~~(2)(3)~~, a statement that the obligor can require the obligee to appear and show proof that the obligor is not meeting the terms of the alternative arrangement.

(3) The notice must be served upon the obligor personally or by certified mail."

Section 74. Section 40-5-414, MCA, is amended to read:

"40-5-414. Hearing. (1) (a) To contest the withholding of income initiated ~~under 40-5-412~~ because of a delinquency or the modification of an existing order to withhold, an obligor may within 10 days of being served with notice of ~~intent to withhold~~ income *withholding* under 40-5-413 file with the department a written request for an administrative hearing to be held pursuant to the contested case provisions of Title 2, chapter 4, part 6.

(b) *The obligor shall include with the hearing request a statement of one or more of the grounds for contesting income withholding provided in 40-5-412. If the hearing request fails to include that statement, the hearings officer may deny the hearing for failure to state an issue upon which a hearing may be granted.*

(2) Venue for the administrative hearing may be in the county where the obligor resides if the obligor resides in this state, the county in which the payor or the payor's agent is located, or the county in which the department or any of its regional offices is located.

(3) The ~~administrative~~ hearing must *initially* be held by teleconferencing methods ~~unless the obligor or the department expressly requests an in-person hearing before the hearings examiner and is subject to the Montana~~

Administrative Procedure Act. At the request of a party, the hearings officer shall grant a de novo in-person hearing.

(4) If the obligor ~~requests~~ *files a timely request for a hearing within the 10-day period:*

~~(a)(a) that includes a statement showing a probable mistake of fact, the initiation of delinquency income withholding by the department and the modification of an existing withholding order must may be stayed upon written request of the obligor until conclusion of the hearing or the date of the hearing if the obligor fails to appear at the scheduled hearing. However, in a proceeding to initiate income withholding, if the obligor is only contesting an arrearage amount and is not contesting withholding for current support, income withholding for current support is not stayed. In a proceeding to modify an existing order, income withholding under the existing order to withhold is not stayed.~~

~~(b) the department shall, within 45 days of the service of the notice of intent to withhold income, inform the obligor of the hearing results concerning whether income withholding will take place.~~

(b) unless good cause is found, the department shall, within 60 days of receipt of a request for a hearing, conduct a hearing. Unless good cause is found, within 60 days after a hearing is held, any post-hearing briefs are received, and all evidence has been provided to the department concerning a notice of intent to withhold income, the department shall inform the obligor whether income withholding must take place.

(5) The department ~~shall issue an order to~~ *may continue an order to withhold income issued because of a delinquency or, a modified may modify an existing order to withhold income, or may issue an order to withhold income in accordance with 40-5-416 if:*

~~(a) the obligor fails to file a timely written request for hearing with the department within the specified 10-day period that includes the statement showing a mistake of fact;~~

~~(b) the obligor fails to appear at a scheduled hearing;~~

~~(c) the hearings examiner determines from the evidence that the obligor owes unpaid support equal to or in excess of 1 month's support obligation and the amount of arrearages owing is determined and adjudged to be a fixed and certain sum is delinquent in the payment of support;~~

~~(d) there is an existing order to withhold and if the hearings examiner determines from the evidence that the obligor owes new or additional amounts in arrears; or~~

~~(e) in cases in which income withholding is being initiated at the request of an obligee without regard to whether there is an arrearage, the hearings examiner determines from the evidence that the obligor did not meet the terms of the alternative arrangement.~~

(6) For purposes of the hearing process, arrearages of support must be computed on the basis of the amount owed and unpaid on the date on which the obligor ~~was served with the notice of intent to withhold income became~~

delinquent. When the department is enforcing a current support obligation income withholding is initiated because of a delinquency, payment of the arrearage after service of the notice or after service of an order to withhold on a payor is not a basis for not initiating or continuing income withholding. Whenever the notice of income withholding is issued because an arrearage has accrued or additional income is being withheld to satisfy additional arrearages, unless good cause is found, within 60 days after a hearing is held, any post-hearing briefs are received, and all evidence has been provided, the department shall inform the obligor whether income withholding must take place.

~~(7) In a case initiated because an arrearage has accrued or because additional income is being withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to withhold income, must be informed of the hearing decision on whether income withholding will take place.~~

~~(8)(7) If the obligor fails to request a hearing within 10 days after service of the notice of income withholding or fails to appear at a scheduled hearing or if the hearings examiner determines that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support obligation unpaid support or determines that a modification of an existing order is proper, the department shall proceed with the intended action issue an order to withhold income in accordance with 40-5-415."~~

Section 75. Section 40-5-421, MCA, is amended to read:

"40-5-421. Duties of payor. (1) A payor who has been served with an order to withhold and deliver income shall deduct the amount designated in the order beginning not later than the first pay period that occurs after ~~14 days from the~~ service of the order. The payor shall, within ~~10~~ 7 working days of the date the obligor is paid, promptly deliver the amount withheld to the department as directed by the order or in accordance with any subsequent modification of the order received from the department. The payor shall include with the payment a statement indicating the date the amount was withheld from the obligor's income.

(2) Whenever the payor is obligated to withhold income for more than one obligor, the payor may combine all amounts withheld into a single payment for that month with the portion ~~thereof which~~ of the withholding that is attributable to each obligor separately designated.

(3) Whenever there is more than one order for withholding against a single obligor, the payor ~~must shall~~ comply with the orders in the sequence in which they were served upon the payor and ~~must shall~~ honor all withholding orders to the extent that the total amount withheld from the obligor's wages or salary does not exceed the limits set in 40-5-416.

(4) The payor ~~must shall~~ promptly notify the department of the termination of the obligor's employment or other source of income and provide the obligor's last-known address and the name and address of the obligor's new employer or other source of income, if known to the payor."

Section 76. Section 40-5-423, MCA, is amended to read:

"40-5-423. Priority of income withholding. An order to withhold and deliver income under this part takes priority over any:

(1) wage or income deduction order under any other state law *and any income-withholding order issued in another state and sent to a payor in this state*;

(2) voluntary or involuntary assignment of wages;

(3) other voluntary deductions from the obligor's income;

(4) levies, writs of execution, or garnishments of the obligor's income; and

(5) any other claims by creditors."

Section 77. Section 40-5-443, MCA, is amended to read:

"40-5-443. Payors to provide information — exemption from liability. (1) For the purposes of this part, upon written request by the department *or by another IV-D agency*, a payor or former payor and any labor union of which the obligor or obligee is or may have been a member shall provide the ~~department~~ requester with the following information, if known, regarding the obligor or obligee:

(a) last-known residential address;

~~(b) social security number;~~

(b) social security number;

~~(c)~~(c) dates of employment or union membership;

~~(d)~~(d) amounts of wages, salaries, commissions, contract proceeds, and other earnings or amounts paid;

~~(e)~~(e) whether health insurance coverage is or was available through the payor or union and, if so:

(i) the name of the insurer or health care provider;

(ii) the policy numbers or other identifiers; and

(iii) the persons covered; and

~~(f)~~(f) names, telephone numbers, and addresses of current and former employers, payors, and unions.

(2) A payor or labor union that discloses information ~~to the department~~ in compliance with this section is exempt from any liability to the obligor or obligee that may result from the disclosure.

(3) Failure to disclose information in compliance with this section subjects the payor or labor union to the sanctions provided in 40-5-226.

(4) The requester shall keep the information provided under subsection (1) confidential except for purposes of Title IV-D of the Social Security Act."

Section 78. Section 40-5-701, MCA, is amended to read:

"40-5-701. Definitions. As used in this part, the following definitions apply:

(1) (a) "Child" means:

(i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age who is still in high school;

(iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person reaching 18 years of age; and

(iv) in IV-D cases, a person for whom:

(A) support rights are assigned under 53-2-613;

(B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

(D) the department has received a referral for interstate services from an agency of another state under the provisions of the *Uniform Interstate Family Support Act*, the *Revised Uniform Reciprocal Enforcement of Support Act*, the *Uniform Reciprocal Enforcement of Support Act*, or ~~under~~ Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support extending beyond the time the child reaches 18 years of age.

(2) "Delinquency" means a support debt or support obligation due under a support order in an amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a license.

(3) "Department" means the department of public health and human services.

(4) "IV-D case" means a case in which the department is providing support enforcement services as a result of:

(a) an assignment of support rights under 53-2-613;

(b) a payment of public assistance;

(c) an application for support enforcement services under 40-5-203; or

(d) a referral for interstate services from an agency of another state under the provisions of the *Uniform Reciprocal Enforcement of Support Act*, the *Revised Uniform Reciprocal Enforcement of Support Act*, the *Uniform Interstate Family Support Act*, or ~~under~~ Title IV-D of the Social Security Act.

(5) "License" means a license, certificate, registration, *permit*, or any other authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, ~~or~~ profession, *recreational activity*, or any other privilege that is subject to suspension, revocation, forfeiture, ~~or~~ termination, or a declaration of ineligibility to purchase by the licensing authority prior to its date of expiration.

(6) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

(7) "Obligee" means:

(a) a person to whom a support debt or support obligation is owed; or

(b) a public agency of this or another state that has the right to receive current or accrued support payments or that is providing support enforcement services under this chapter.

(8) "Obligor" means a person who owes a duty of support or who is subject to a subpoena or warrant in a paternity or child support proceeding.

(9) "Order suspending a license" means an order issued by a support enforcement entity to suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social security number of the obligor, and, if known, the social security number of the obligor.

(10) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support debt and, if applicable, current and future support.

(11) "Recreational activity" means an activity for which a license or permit is issued by the department of fish, wildlife, and parks under Title 87, chapter 2, part 6 or 7, except 87-2-708 or 87-2-711, or under sections 87-2-505, 87-2-507, 87-2-508, or 87-2-510.

(12) "Subpoena" means a writ or order issued by a district court or the department in a proceeding or as part of an investigation related to the paternity or support of a child that commands a person to appear at a particular place and time to testify or produce documents or things under the person's control.

~~(11)~~(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide support to a child under the laws of this or any other state or a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child for whom the person awarded maintenance is the custodial parent.

~~(12)~~(14) "Support enforcement entity" means:

(a) in IV-D cases, the department; or

(b) in all other cases, the district court that entered the support order or a district court in which the support order is registered.

~~(13)~~(15) "Support order" means an order that provides a determinable amount for temporary or final periodic payment of a support debt or support

obligation and that may include payment of a determinable or indeterminable amount for insurance covering the child issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

(c) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

(d) an administrative agency of another state with a hearing function and process similar to those of the department.

(16) "Suspension" includes the withdrawal, withholding, revocation, forfeiture, or nonissuance of a license and license privileges.

(17) "Warrant" means a bench warrant, a warrant to appear, an order to show cause, or any other order issued by the district court relating to the appearance of a party in a paternity or child support proceeding."

Section 79. Section 40-5-702, MCA, is amended to read:

"40-5-702. Notice of intent to suspend license. (1) Upon the petition of an obligee alleging the existence of a delinquency or upon the failure of an obligor to comply with a subpoena or warrant, a support enforcement entity may issue a notice of intent to suspend a license.

(2) The notice must be served upon the obligor personally or by certified mail and may:

(a) in a IV-D case, be incorporated into any notice served under Title 17, chapter 4, part 1, or Title 40, chapter 5, part 2 or 4;

(b) in all other cases, be combined with any other enforcement proceeding.

(3) The notice must state that the obligor's license will be suspended 60 days after service unless within that time the obligor:

(a) pays the entire support debt stated in the notice;

(b) enters into a payment plan approved by the support enforcement entity;

or

(c) complies with the subpoena or warrant; or

~~(e)~~(d) appears and shows cause in a hearing before the support enforcement entity under 40-5-703 that suspension of a license is not appropriate.

(4) In a IV-D case, the notice must advise the obligor that hearings conducted under 40-5-703 are subject to the contested case provisions of the Montana Administrative Procedure Act."

Section 80. Section 40-5-703, MCA, is amended to read:

"40-5-703. Hearing — order suspending license. (1) To show cause why suspension of a license would not be appropriate, the obligor shall request a

hearing from the support enforcement entity that issued the notice of intent to suspend the license. The request must be made within 60 days of the date of service of the notice.

(2) Upon receipt of a request for hearing from an obligor, the support enforcement entity shall schedule a hearing for the purpose of determining if suspension of the obligor's license is appropriate. The support enforcement entity shall stay suspension of the license pending the outcome of the hearing.

(3) The only issues that may be determined in a hearing under this section are the amount of the support debt or support obligation, if any, whether or not a delinquency exists, ~~and~~ whether or not the obligor has entered into a payment plan, ~~and whether or not the obligor failed to comply with a subpoena or warrant.~~

(4) If an obligor fails to respond to a notice of intent to suspend a license, fails to timely request a hearing, or fails to appear at a regularly scheduled hearing, the obligor's defenses, objections, or request for a payment plan must be considered to be without merit and the support enforcement entity shall enter a final decision and order accordingly.

(5) If the support enforcement entity determines that the obligor owes a delinquency and that the obligor has not entered into a payment plan ~~or that the obligor failed to comply with a subpoena or warrant~~, the support enforcement entity shall issue an order suspending the obligor's license and ordering the obligor to refrain from engaging in the licensed activity. The support enforcement entity shall send a copy of the order suspending a license to ~~the licensing authority~~ ~~and the obligor~~ ~~and shall notify the licensing authority in writing of the suspension.~~ Notification to the licensing authority is not required if the support enforcement entity has previously suspended the license of the obligor and the suspension is still in effect.

(6) The determinations of the department under this section are a final agency decision and are subject to judicial review under 40-5-253 and the Montana Administrative Procedure Act.

(7) A determination made by the support enforcement entity under this part is independent of any proceeding of the licensing authority to suspend, revoke, deny, terminate, or renew a license."

Section 81. Section 40-5-704, MCA, is amended to read:

"40-5-704. Suspension, denial, and nonrenewal of licenses. (1) Upon receipt of ~~an order suspending a license~~ *the notice of suspension of the license under 40-5-703(5)*, a licensing authority shall implement the suspension of the license by:

(a) determining if it has issued a license to the obligor whose name appears on the ~~order~~ notice;

(b) entering the suspension on the appropriate records;

(c) reporting the suspension as appropriate; ~~and~~

(d) *making good faith efforts to deny recreational activity licenses for the next applicable license year; and*

~~(d)~~(e) if required by law, demanding surrender of the suspended license.

(2) An order issued by a support enforcement entity under 40-5-703 suspending a license *and the notice of suspension given under 40-5-703(5)* must be processed by the licensing authority without an additional review or hearing involving the licensing authority concerning suspension of the license.

(3) Notwithstanding the provisions of any other law setting terms of suspension, revocation, denial, termination, or renewal of a license, an order issued by a support enforcement entity suspending a license must be implemented by the licensing authority and continues until the support enforcement entity advises the licensing authority that the suspension has been stayed or terminated.

(4) In the event that a license is suspended, any funds paid by the obligor to the licensing authority for costs related to issuance, renewal, or maintenance of a license may not be refunded to the obligor.

(5) Unless an order staying suspension of a license is in effect, an obligor who continues to engage in the business, occupation, profession, *recreational activity*, or other licensed activity while the obligor's license is suspended under this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$250 or more than \$500 or by imprisonment in the county jail for a term not to exceed 6 months, or both. Upon conviction of a second or subsequent violation, the obligor shall be punished by a fine of not less than \$500 or more than \$2,000 or by imprisonment in the county jail for a term not to exceed 1 year, or both. The support enforcement entity or the licensing authority may elect the remedy under this section or any other remedy provided for engaging in a licensed activity without a license or while the license is suspended.

(6) The licensing authority is exempt from liability to the licensee for activities conducted in compliance with this part.

(7) The licensing authority has no jurisdiction to modify, remand, reverse, vacate, or stay the order of the support enforcement entity suspending a license.

(8) To the extent that inconsistencies exist between this part and the procedural requirements for suspension of a license issued by the department, this part supersedes those requirements."

Section 82. Section 40-5-709, MCA, is amended to read:

"40-5-709. Nondisciplinary suspension for failure to pay child support. Notwithstanding any other provision of this title, the ~~department~~ support enforcement entity has the authority to suspend a license *or privilege to obtain a license* under this part without any action by the licensing authority. The licensing authority shall, upon receipt of ~~an order issued by~~ *notice of suspension of the license under 40-5-703(5)* from the support enforcement entity, suspend the license *or privilege to obtain a license* of the named individual. The suspension must be nondisciplinary for professional or occupational licenses, and the provisions of 2-4-631 do not apply."

Section 83. Section 40-5-710, MCA, is amended to read:

"40-5-710. Stay of suspension of license — payment plan — hardship. (1) An obligor may at the time of the hearing conducted under 40-5-703 or, *except for a recreational activity license*, at any time after the hearing, petition the support enforcement entity for an order staying suspension of the license.

(2) The support enforcement entity shall consider the obligor's petition for a stay separately from any determination on whether suspension of a license is appropriate.

(3) The support enforcement entity may stay suspension of a license upon a showing that suspension or continued suspension of a license would create a significant hardship to the obligor, to the obligor's employees, to legal dependents residing in the obligor's household, or to persons, businesses, or other entities served by the obligor.

(4) A stay terminates upon:

(a) termination of the circumstances upon which a hardship is based;

(b) failure by the obligor to abide by the terms and conditions of a payment plan; or

(c) the date of termination, if any, provided in the order staying suspension of the license.

(5) If the licensing authority has been notified of an order suspending a license, the support enforcement entity shall notify the licensing authority of any stay or reinstatement unless the support enforcement entity has suspended the license of the obligor for another delinquency or for failure to comply with a subpoena or warrant and the suspension for the other delinquency or failure to comply with a subpoena or warrant is still in effect. The support enforcement entity shall send a copy of any order staying or reinstating suspension of the license to the ~~licensing authority and the~~ obligor.

(6) (a) Upon receipt of ~~an order~~ a notice staying or reinstating suspension of the license, the licensing authority shall:

(i) enter the information on appropriate records;

(ii) report the action as appropriate; and

(iii) demand surrender of the suspended license or return the reinstated license.

(b) Further action by the licensing authority is not necessary to implement the stay or reinstatement of suspension of the license."

Section 84. Section 40-5-711, MCA, is amended to read:

"40-5-711. Termination of order to suspend license. (1) ~~When~~ *Except as provided in subsection (3), when* the support enforcement entity determines that the support debt or support obligation is paid in full *or the obligor has complied with the subpoena or warrant*, it shall terminate the order suspending

the license. The support enforcement entity shall send a copy of the order terminating the suspension of the license to the ~~licensing authority and the~~ obligor.

(2) Entry of an order terminating suspension of a license does not limit the ability of a support enforcement entity to issue a new order suspending the license of the same obligor in the event of another delinquency *or failure to comply with a subpoena or warrant*.

(3) *A suspension of a recreational activity license is effective for the license year. The suspension does not terminate if the support enforcement entity determines that the support debt or support obligation is paid in full or the obligor has complied with the subpoena or warrant."*

Section 85. Section 40-6-102, MCA, is amended to read:

"40-6-102. Definitions. As used in this part, the following definitions apply:

(1) "Blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. *The genetic markers may be identified from a person's blood or a tissue sample. The blood or tissue sample may be taken by blood drawing, buccal swab, or any other method approved by the American association of blood banks.* A blood test may include but is not limited to the human leukocyte antigen test and DNA probe technology.

(2) "Parent and child relationship" means the legal relationship existing between a child and the child's natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

(3) "Support judgment" or "support order" means an order, whether temporary or final, that provides for the periodic payment of an amount of money expressed in dollars for the support of a child, including medical and health needs, child care, education, recreation, clothing, transportation, and other related expenses and costs specific to the needs of the child."

Section 86. Section 40-6-105, MCA, is amended to read:

"40-6-105. Presumption of paternity. (1) A person is presumed to be the natural father of a child if any of the following occur:

(a) the person and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce or after a decree of separation is entered by a court;

(b) before the child's birth, the person and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(c) after the child's birth, the person and the child's natural mother have married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and;

(i) the child's mother and the child's alleged father have acknowledged the alleged father's paternity of the child in writing in accordance with subsection (1)(e) and the acknowledgment is filed with the department of public health and human services ~~or with the district court for the county where the person resides or for any county where the child support enforcement division of the department of public health and human services maintains a regional office;~~

(ii) with the person's consent, the person is named as the child's father on the child's birth certificate; or

(iii) the person is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, the person receives the child into the person's home and openly represents the child to be the person's natural child;

(e) the child's mother and the child's alleged father acknowledge the alleged father's paternity of the child in a paternity acknowledgment form that is provided by the department of public health and human services ~~and filed with the department or with the district court of the county where the person resides or for any county where the child support enforcement division of the department of public health and human services maintains a regional office.~~ The department of public health and human services ~~or the district court~~ shall accept and file the completed form. As a part of a voluntary acknowledgment process, the department of public health and human services shall ~~provide~~ make written and oral information available to the parents regarding the rights and responsibilities of acknowledging paternity. If another person is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted. *The presumption of paternity is created when the acknowledgment is filed with the department.*

(f) the scientific evidence resulting from a blood test, whether ordered by a court or administrative agency of competent jurisdiction or agreed to by the parties, shows a 95% or higher statistical probability of paternity;

(g) *the person is presumed to be the child's natural father under the laws of the state or Indian territory in which the child was born.*

(2) An acknowledgment is binding on a parent who executes it, whether or not the parent is a minor.

(3) *Except for presumptions of paternity that are conclusive or irrebuttable under subsections (1)(g) and (5), a presumption under this section may be rebutted:*

(a) in an appropriate action by a preponderance of the evidence; or

(b) *by scientific evidence resulting from a blood test that excludes the person as the child's natural parent.*

(4) (a) A presumption of paternity established under this section is a sufficient basis for establishing a support order.

(b) *If a presumption is later rebutted or set aside and the person is under an order to pay support for the child, the person may only be relieved of support installments that accrued from the date of the order declaring the presumption to be rebutted.*

(5) (a) *An acknowledgment of paternity under subsection (1)(e) may be rescinded by a signatory at any time within 60 days after it was signed by filing a notice of withdrawal with the department of public health and human services. The notice of withdrawal must include an affidavit attesting that a copy of the notice was provided to any parent who signed the acknowledgment form.*

(b) *Without need for ratification by court or administrative proceedings, an acknowledgment of paternity under subsection (1)(e) becomes, as a matter of law, an irrebuttable presumption of paternity on the earlier of the date:*

(i) *the acknowledgment is not timely rescinded as provided in subsection (5)(a);*
or

(ii) *a court or administrative judgment, decree, or order is entered that establishes paternity or a support order, when that proceeding includes the signatory.*

(c) *An irrebuttable presumption of paternity under this subsection (5) has the same force and effect as a district court judgment adjudicating paternity and may only be set aside for fraud, duress, or material mistake of fact. The burden of proof is on the person seeking to set the presumption aside. Except for good cause, legal responsibilities arising from the paternity acknowledgment may not be stayed pending the outcome of an action to set aside the presumption."*

Section 87. Section 40-6-111, MCA, is amended to read:

"40-6-111. Pretrial proceedings. (1) As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing ~~shall~~ must be held. The court may order that the hearing be held before a referee. The public ~~shall~~ must be barred from the hearing. A record of the proceeding ~~shall~~ must be kept.

(2) Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order ~~him~~ the witness to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that ~~his~~ the testimony or evidence might tend to incriminate ~~him~~ the witness, the court may grant ~~him~~ the witness immunity from all criminal liability on account of the testimony or evidence ~~he~~ the witness is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence ~~he~~ that the witness is required to produce, except for perjury committed in ~~his~~ the testimony. The refusal of a

witness who has been granted immunity to obey an order to testify or produce evidence is a civil contempt of the court.

(3) *Upon motion, a temporary support order may be issued at any time during a paternity action when there is clear and convincing evidence of paternity in the form of blood test results or other evidence. The temporary support order must be established according to the uniform child support guidelines adopted under 40-5-209."*

Section 88. Section 40-6-115, MCA, is amended to read:

"40-6-115. Civil action. (1) An action under this part is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Sections 40-6-111(2), 40-6-112, and 40-6-113 apply to all actions brought under this part.

(2) Testimony relating to sexual access to the mother by an unidentified person at any time or by an identified person at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

(3) In an action against an alleged father, evidence offered by the alleged father with respect to a person who is not subject to the jurisdiction of the court concerning sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the alleged father has undergone and made available to the court blood tests, the results of which do not exclude the possibility of the alleged father's paternity of the child. A person who is identified and is subject to the jurisdiction of the court must be made a defendant in the action.

(4) If a blood test has been initially ordered under this part and a party objects to the blood test results, the objection must be filed within 20 days after service of the blood test results. If an objection is filed, *and upon the alleged father's advance payment for additional testing*, the court shall order an additional blood test. If no objection is made, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy. This subsection does not limit the right of a party to contest the identity of persons submitting to testing.

(5) If the alleged father fails to answer or to appear at a scheduled hearing or for a scheduled blood test, the district court shall enter an order declaring the alleged father the legal father of the child. The district court may not enter an order under this section if there is more than one alleged father unless the default applies to only one of them and all others have been excluded by the results of blood testing.

(6) *Bills for pregnancy, childbirth, and paternity blood testing are admissible as evidence without third-party foundation testimony and are prima facie evidence of the amounts incurred."*

Section 89. Section 40-6-116, MCA, is amended to read:

"40-6-116. Judgment or order. (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.

(c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) (a) Support judgments or orders ordinarily must be for periodic payments, which may vary in amount.

(b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.

(c) The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court considers just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

- (a) the needs of the child, including medical needs;
- (b) the standard of living and circumstances of the parents;
- (c) the relative financial means of the parents;
- (d) the earning ability of the parents;
- (e) the need and capacity of the child for education, including higher education;
- (f) the age of the child;
- (g) the financial resources and the earning ability of the child;
- (h) the responsibility of the parents for the support of others;
- (i) the value of services contributed by the custodial parent;
- (j) the cost of day care for the child; and
- (k) any custody arrangement that is ordered or decided upon.

(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the

department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(d) *Child support obligations established under this section are subject to the registration and processing provisions of [sections 1 through 11].*

(7) The judgment or order, whether temporary or final, concerning child support and each modification of a judgment or order for child support must include a medical support order as defined in 40-5-804.

(8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation made under 40-6-118 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period.

(c) *If an obligor is excepted from paying support through income withholding, the support order must include as part of the order a requirement that whenever the case is receiving services under Title IV-D of the Social Security Act, support payments must be paid through the department of public health and human services as provided in [section 5].*

(9) (a) ~~For the purposes of income withholding as provided in subsection (8), whenever~~ If the district court establishes paternity or establishes or modifies a child support obligation, the judgment, decree, or order must include a provision

~~requiring the parent obligated to pay support to inform parties to promptly file with the court and, if the department of public health and human services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following to update, as necessary, information on:~~

(i) *identity of the party;*

[(ii) *social security number;*]

(iii) *residential and mailing addresses;*

(iv) *telephone number;*

(v) *driver's license number;*

~~(vi) the name, and address, and telephone number of the parent's current party's employer; and~~

~~(b) whether the parent has access to health insurance through an employer or other group; and~~

~~(c) if insurance coverage is available, the health insurance policy information.~~

(vii) *if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the party's employer.*

(b) *The order must further direct that in any subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or the department of public health and human services, if the department is providing services under Title IV-D of the Social Security Act, may consider the due process requirements for notice and service of process to be met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the court.*

(10) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of public health and human services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

[(11) *The social security number of a person subject to a paternity determination under this part must be recorded in the records relating to the matter. The recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.*]

Section 90. Section 40-6-117, MCA, is amended to read:

"40-6-117. Enforcement of judgment or order. (1) If existence of the father and child relationship is declared or paternity or a duty of support has been acknowledged or adjudicated under this part or under prior law, the court may, *except as provided in 40-6-116(8) and [section 5],* order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(2) Full faith and credit must be given to a determination of paternity made by any other state, whether presumed by law, established through voluntary acknowledgment, or established by administrative or judicial processes.

(3) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

(4) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support obligation to be paid, *without need for further order of the court,* to:

(i) the legal custodian of the minor child;

(ii) ~~(A) any other a person, organization, or agency having legal to which the legal custodian voluntarily or involuntarily relinquishes actual physical custody of the minor child or collecting child support on behalf of the minor child under a legal assignment of rights; or~~

~~(B) the court for the benefit of the minor child;~~

(iii) any other person, organization, or agency designated as caretaker of the minor child by agreement of the legal custodian; or

~~(iv) any assignee or other person, organization, or agency authorized to receive or collect child support entitled by law, assignment, or similar reason to receive or collect the child support obligation.~~

(b) *If the department of public health and human services is providing services under Title IV-D of the Social Security Act, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment.*

~~(b)(c)~~ (c) A judgment, decree, or order that omits the provision required by subsection (4)(a) is subject to the requirements of subsection (4)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court."

Section 91. Section 50-15-210, MCA, is amended to read:

"50-15-210. Paternity acknowledgment. (1) Upon the birth of a child to a mother unmarried at the time of birth, the administrator or person in charge of a hospital or other institution in which the birth occurs or the midwife who attends the birth shall:

(a) provide an opportunity for the child's mother and alleged father to complete an acknowledgment of paternity pursuant to 40-6-105;

(b) provide written information, furnished by the department of public health and human services, describing the rights and responsibilities of paternity, the benefits of having a child's paternity established, and the child's right to receive support; and

(c) forward a copy of an acknowledgment signed by the mother and the father to the department.

(2) The hospital, institution, or midwife is entitled to reimbursement for reasonable costs of obtaining an acknowledgment. The department of public health and human services shall establish the amount of reasonable costs, not to exceed the amount for which federal financial participation is available, and the procedures for claiming reimbursement.

(3) Hospitals, institutions, and midwives shall use forms prescribed by the department of public health and human services for the acknowledgment of paternity.

(4) If the child is born in this state, the department of public health and human services shall file an acknowledgment received under 40-6-105 or this section with the child's certificate of birth. If the child was not born in this state or if an acknowledgment received under 40-6-105 or this section cannot be filed with the child's certificate of birth, the department shall file the acknowledgment in an acknowledgment registry created and maintained for that purpose."

Section 92. Section 50-15-223, MCA, is amended to read:

"50-15-223. Certificates of birth following adoption, legitimation, or determination or acknowledgment of paternity. (1) The department shall establish a new certificate of birth for a person born in this state when the department receives the following:

(a) a certificate of adoption, as provided in 50-15-311, a certificate of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; or

(b) a request that a new certificate be established if the request shows that:

(i) a district court, *court of appropriate jurisdiction in another state, or administrative agency in this state or another state with appropriate jurisdiction* has determined the paternity of the person *and information necessary to identify the original certificate of birth is provided;* or

(ii) both parents have acknowledged the paternity of the person and request that the surname be changed from that shown on the original certificate.

(2) The date of birth and the city and county of birth must be stated in the newly established certificate of birth. The department shall substitute the new certificate of birth for the original certificate of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or paternity acknowledgment may not be subject to inspection, except upon order of a district court, as provided by rule, or as otherwise provided by state law.

(3) Upon receipt of a report of an amended decree of adoption, the department shall amend the certificate of birth as provided in rules adopted by the department.

(4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the original certificate of birth issued before the adoption to its place in the files and the certificate of birth issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection, except upon order of a district court or as provided by rule adopted by the department.

(5) Upon written request of both parents and receipt of a sworn acknowledgment and other credible evidence of paternity signed by both parents of a child born outside of marriage, the department shall reflect the paternity on the child's certificate of birth if paternity is not already shown on the certificate of birth.

(6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth is to be established under this section and the date and place of birth have not been determined in the adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with the department, as provided in 50-15-204, before a new certificate of birth may be established. The new certificate of birth must be prepared on a form prescribed by the department.

(7) When a new certificate of birth is established by the department, the department may direct that all copies of the original certificate of birth in the custody of any other custodian of vital records in this state either be sealed from inspection or be forwarded to the department for sealing from inspection.

(8) (a) The department shall, upon request of the adopting parents, prepare and register a certificate of birth in this state for a person born in a foreign country who is not a citizen of the United States and who was adopted through a district court in this state.

(b) The certificate of birth must be established by the department upon receipt of a certificate of adoption, conforming to the requirements of 50-15-311, from the court that reflects entry of an order of adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or older.

(c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual country of birth. A statement must be included on the certificate indicating that it is not evidence of United States citizenship for the child for whom it is issued.

(d) After registration of the certificate of birth in the new name of the adopted person, the department shall seal and file the certificate of adoption, which is not subject to inspection, except upon order of the district court, as provided by rule, or as otherwise provided by state law.

(9) The department may promulgate rules necessary to implement this section."

Section 93. Section 50-15-403, MCA, is amended to read:

"50-15-403. Preparation and filing of death or fetal death certificate. (1) A person in charge of disposition of a dead body or fetus that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death shall obtain personal data on the deceased, including the deceased's social security number, if any, or, in the case of a fetal death, on the parents that is required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate.

(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician or the coroner having jurisdiction for medical certification of the cause of death. The person in charge of disposition shall obtain the completed certification of the cause of death from the physician or coroner and shall, within the time that the department may by rule prescribe, file the death or fetal death certificate with the local registrar in the registration area where the death occurred."

Section 94. Section 53-2-613, MCA, is amended to read:

"53-2-613. Application for assistance — assignment of support rights. (1) Applications for public assistance, including but not limited to aid to families with dependent children and medical assistance, must be made to the county department of public welfare in the county in which the person is residing. The application must be submitted, in the manner and form prescribed by the department of public health and human services, and must contain information required by the department of public health and human services.

(2) A person by signing an application for public assistance assigns to the state, to the department of public health and human services, and to the county welfare department all rights that the applicant may have to support and medical payments from any other person in the applicant's own behalf or in behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance;

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient; and

(d) does not apply to support that accrued before the applicant received public assistance.

(4) If a person who is the legal custodian and child support obligee under a support order relinquishes physical custody of a child to a caretaker relative without obtaining a modification of legal custody and the caretaker relative is determined eligible for public assistance on behalf of the child, the child support obligation is transferred by operation of law to the caretaker relative and may be assigned as provided in subsection (2). The transfer and assignment terminate

when the caretaker relative no longer has physical custody of the child, except for any unpaid support still owing under the assignment at that time.

(4)(5) Whenever a child support or spousal support obligation is assigned to the department of public health and human services pursuant to this section, the following provisions apply:

(a) If the support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse public assistance money expended.

(b) A recipient or former recipient of public assistance may not commence or maintain an action to recover or enforce a delinquent support obligation or make any agreements with any other person or agency concerning the support obligation, except as provided in 40-5-202.

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department's child support enforcement division has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are satisfied or released.

(d) A recipient or former recipient of public assistance may not take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department's child support enforcement division is given written notice under the provisions of 40-5-202. Any modifications or agreements entered into without the participation of the department are void with respect to the state, the department, and the county welfare department.

(e) A support obligation assigned under this section may not be terminated, invalidated, waived, set aside, or considered uncollectible by the conduct, misconduct, or failure of a recipient or former recipient of public assistance to take any action or to cease any action required under a decree, judgment, support order, custody order, visitation order, restraining order, or other similar order."

Section 95. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form furnished by the department. A motorcycle endorsement is required for the operation of a quadricycle. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must state the full name, date of birth, sex, ~~and~~ residence address of the applicant, ~~and if the application is for a commercial vehicle operator's license, social security number,~~ must briefly describe the applicant, and must state whether:

(a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country;

(b) any commercial operator license has ever been suspended or revoked; or

(c) an application has ever been refused, and, if so, the date of and reason for suspension, revocation, or refusal.

(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.

~~(3)~~(4) When application is received from an applicant previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction. The driving record may be transmitted manually or by electronic medium. When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance."

Section 96. Section 87-1-102, MCA, is amended to read:

"87-1-102. Penalties. (1) A person who purposely, knowingly, or negligently violates a provision of this title, any other state law pertaining to fish and game, or the orders or rules of the commission or department is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined an amount not less than \$50 or more than \$1,000 or imprisoned in the county jail for not more than 6 months, or both, unless a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of that person's license and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period set by the court. If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.

(2) (a) A person convicted of unlawfully taking, killing, possessing, or transporting a bighorn sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals shall be fined an amount not less than \$500 or more than \$2,000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall

surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, or mountain lion or any part of these animals shall be fined an amount not less than \$300 or more than \$1,000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(c) A person convicted of unlawfully attempting to trap or hunt a game animal shall be fined an amount not less than \$200 or more than \$600 or imprisoned in the county jail for not more than 60 days, or both.

(d) A person convicted of purposely, knowingly, or negligently taking, killing, trapping, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined an amount not less than \$100 or more than \$1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period, and any pelts possessed unlawfully must be confiscated. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(e) A person convicted of hunting, fishing, or trapping while that person's license is forfeited or a privilege is denied shall be imprisoned in the county jail for not less than 5 days or more than 6 months. In addition, that person may be fined an amount not less than \$500 or more than \$2,000.

(3) A person convicted or who has forfeited bond or bail under this section and whose license privileges are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit during the period when license privileges have been forfeited. A person convicted of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the period when license privileges have been forfeited shall be fined an amount not less than \$500 or more than \$2,000, imprisoned in the county jail for not more than 60 days, or both.

(4) A person convicted or who has forfeited bond or bail under this section and who has been ordered to pay restitution under the provisions of 87-1-111 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. If the violation involved the unlawful taking of a moose, a bighorn sheep, or a mountain goat, the person may not apply for a special license or enter a drawing for a special license or permit for the same species of game animal that was unlawfully taken

for an additional period of 5 years following the ending date of the first 5-year period. A person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special license or permit shall be fined an amount not less than \$500 or more than \$2,000, imprisoned in the county jail for not more than 60 days, or both.

(5) Notwithstanding the provision of subsection (1), the penalties provided by this section are in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2.

(6) *If an administrative authority suspends a license, permit, or privilege to obtain a license or permit issued under this title, the administrative authority or the department shall notify the person of the suspension and the person shall surrender the license or permit to the department within 10 days.*

Section 97. Section 87-1-108, MCA, is amended to read:

"87-1-108. Suspension of privileges for failure to comply with citation or sentence. (1) A person who fails to comply with the terms of a court citation, *the terms of an administrative suspension*, or fails to fulfill the obligations of any court-imposed sentence for a wildlife violation under this title, resulting in the issuance of a warrant for ~~his~~ *the person's* arrest, shall surrender any current hunting, fishing, and trapping licenses to the department, and ~~his~~ *the person's* privileges to hunt, fish, and trap and to hold a valid license to hunt, fish, or trap are suspended until the terms of the court citation or sentence are satisfied.

(2) A person who loses ~~his~~ *the person's* privileges under this section *or through an administrative process* must be notified by the department *or by the administrative authority* in person or by mail. A person who hunts, fishes, traps, purchases licenses, or refuses to surrender any current hunting, fishing, or trapping license in violation of this section is guilty of a misdemeanor and subject to the penalties prescribed in 87-1-102."

Section 98. Report to legislature. The department of public health and human services shall report to the regular session of the 56th legislature on progress toward resolving child support issues between the state, federal, and tribal governments.

Section 99. Codification instruction. (1) [Sections 1 through 11] are intended to be codified as an integral part of Title 40, chapter 5, and the provisions of Title 40, chapter 5, apply to [sections 1 through 11].

(2) [Section 12] is intended to be codified as an integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to [section 12].

(3) [Section 13] is intended to be codified as an integral part of Title 40, chapter 5, part 1, and the provisions of Title 40, chapter 5, part 1, apply to [section 13].

(4) [Section 14] is intended to be codified as an integral part of Title 19, chapter 2, part 9, and the provisions of Title 19, chapter 2, apply to [section 14].

(5) [Section 15] is intended to be codified as an integral part of Title 19, chapter 20, part 3, and the provisions of Title 19, chapter 20, apply to [section 15].

Section 100. Coordination instruction. If House Bill No. 168 is passed and approved and if it includes the words "or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing" or similar language in amendments to the following MCA sections, then that language is stricken from those sections:

17-4-105(4)(c)

40-5-189(1)

40-5-226(2)

40-5-414(3)

40-5-703(2)

40-5-824(5).

Section 101. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 102. Two-thirds vote required. Because 40-5-206 limits governmental liability by including a provision that a public entity that discloses certain information is not liable for negligent disclosure, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage of that provision. If the required vote is not obtained, the bracketed phrase contained in 40-5-206 is void.

Section 103. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective July 1, 1997.

(2) [Sections 1, 9, 10, and 13] are effective October 1, 1997.

(3) [Sections 2 through 8] are effective October 1, 1998.

Section 104. Contingent termination — request for federal exemptions. (1) [Sections 9, 11, 22 through 24, 93, and 95] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] terminate on the date of the suspension if the federal government suspends federal payments to this state for this state's child support enforcement program and for this state's program relating to temporary assistance to needy families because of this state's failure to enact law as required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) [Sections 9, 11, 22 through 24, 93, and 95] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

(a) [section 9];

(b) [section 11];

(c) [sections 22 through 24];

(d) [section 93];

(e) [section 95];

(f) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89].

(4) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted this state an exemption from one of the following provisions, the provision terminates on the date the exemption takes effect:

(a) [section 9];

(b) [section 11];

(c) [sections 22 through 24];

(d) [section 93];

(e) [section 95];

(f) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89].

(5) (a) The department of public health and human services shall do everything reasonably within its power to obtain, as soon as possible, federal government exemptions from the provisions listed in subsection (4).

(b) Because section 395(c) of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) allows a grace period for states to amend their constitutions in order to comply with PRWORA and because the Montana legislature believes that the section of PRWORA prohibiting a jury trial in a paternity proceeding violates Article II, section 26, of the Montana constitution and is therefore rejected, the department of public health and human services shall seek a federal government exemption from the jury trial prohibition in PRWORA as the first exemption it seeks under subsection (5)(a).

(6) [Sections 9, 11, 22 through 24, 93, and 95] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] terminate July 1, 1999.

(7) If the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement.

Approved May 12, 1997